

**IN THE COURT OF THE PRINCIPAL CITY CIVIL AND
SESSIONS JUDGE, AT BENGALURU**

DATED THIS THE 24th DAY OF JANUARY, 2018

PRESENT: SRI. SHIVASHANKAR B. AMARANNAVAR,
B.Com., LL.M.,
Principal City Civil and Sessions Judge,
Bengaluru.

MISC.No.716/2017

- PETITIONERS** : 1. Mr. Samuel Deva Prasad
Aged about 61 years,
Pearson Nest Apartment,
35/15, Langford Road Cross,
Shanthinagar Post,
Bangalore – 560 025.
2. Rev. John Sathyaveera
S/o. Late. Rudrappa,
Aged about 68 years,
22, Papaya Garden,
I Main, 2nd Stage,
KHB Colony,
Basaveshwara Nagar,
Bangalore – 560 079.
3. Mr. Joseph Thangavelu D
Aged about 50 years,
S/o. Late. T. David,
Prashanthnagar,
Chikkaballapur – 562 101.
4. Mr. Praveen Dass
Aged about 39 years,
S/o. Late. B.A. Swamidass
No.3/547, Davis Road,
Sagayapuram,
Bangalore – 560 084.

5. Mr. R.S. Manuel
Aged about 67 years,
S/o. Lae. S.E. Manuel,
142, Lalbagh Road,
Bangalore – 560 027.
6. Mr. Robin
Aged about 38 years,
S/o. Late. J. Rabindra,
No.003, Doddaballapur Road,
Yelahanka,
Bangalore.

[Sri.PPS Advocate]

Vs.

- RESPONDENTS** : 1. Bangalore Baptist Church Trust
No.97, New No.11,
Commissariat Road,
Bangalore – 560 026
Rep. by its Trustee;
2. S.C. Emmanuel
Aged Major,
15/2, Ramanachala Apt,
I A, Banasawadi Main Road,
Bangalore – 560 005.
 3. Charles Isaac
Aged Major,
316, 1st Cross, 3rd Block,
HRBR Layout,
St. Thomas Town,
Bangalore – 560 084.
 4. Glen Karl Robson
Aged Major
No.712, Ground Floor,
Ex-servicemen Colony,
Dodda Banasawadi,
Bangalore – 560 001.

5. Charles Prabhakar
Aged Major,
Hithananda – 2,
1st Floor, 48,
Lavelle Road,
Bangalore – 560 001.
6. Verkey George
Aged Major,
Shelter No.29,
2nd Main, Munireddy Layout,
Horamavu,
Bangalore – 560 043.
7. Pastor Daniel A. Bhasme
Aged 50 years,
S/o. Late. Ananth Bhasme,
No.11, Commissariat Road,
Bangalore – 560 025.
8. M/s. Vaswani Estates Developers Pvt. Ltd.,
Having its Office at No.30,
“Vaswani Victoria”,
Victoria Road,
Bangalore – 560 047,
Represented by its Director.
9. M/s. Nitesh Estates Limited,
Level 7, Nitesh Times Square,
No.8, M.G. Road,
Bangalore – 560 001.
Represented by its Director
10. Far East Broadcasting Associates of India-
FEBA, Having its office at
No.7, Commissariat Road,
Bangalore – 560 025.
Represented by its Director.

[R.1-3, 5 & 6 by Sri.NA, Advocate]

[R.7 by Sri.JR, Advocate]

[R.8 by Sri.GLV, Advocate]

[R.9 by Sri.MG, Advocate]

[R.10 by Sri.SNB, Advocate]

PARTIES TO I.A.NO.I

APPLICANTS : 1. Mr. Samuel Deva Prasad
Aged about 61 years,
Pearson Nest Apartment,
35/15, Langford Road Cross,
Shanthinagar Post,
Bangalore – 560 025 and five others.

Vs.

OPPONENTS : 1. Bangalore Baptist Church Trust
No.97, New No.11,
Commissariat Road,
Bangalore – 560 026
Rep. by its Trustee and 9 others

ORDER ON I.A.NO.I

The petitioners have filed I.A.No.I under Order 39 Rules 1 and 2 R/w. Sec.151 of the Code of Civil Procedure, 1908, seeking grant of temporary injunction restraining the respondents, their agents, representatives from putting up any construction or changing the nature of schedule property and also by permitting the petitioners and its congregation of members to make prayer in the Church i.e., the schedule property.

2. The Schedule Property described in the I.A. is as under;

SCHEDULE PROPERTY

All that piece and parcel of the property bearing Municipal No.97 & 12 (New No.7, 7/1, 7/2, 7/5, 8, 8/2, 8/3, 9, 10, 11, 12 & 13), Commissariat Road, Near Bangalore Central, Bangalore – 560 025, totally measuring 1,25,037 Sq.Feet presently within the limits of BBMP and bounded on;

East by : Jain Shiksha Property

West by : Commissariat Road

North by: Private Property.

South by: Property of Mr. Mathais & Mr. Lobo.

The petitioner No.1, in the supporting affidavit to I.A.No.I has stated that Rev. Edmond Marsden established the Church in the Application Schedule Property by transferring all his right, title and interest and named the said Church as “Bangalore Baptist Church” and a Deed of Trust was executed to this effect on 12.12.1867. The members of the congregation used to offer their prayers in the Church from the inception. It is further stated that the Westerners were continued to be the trustees of Bangalore Baptist Trust till 1963. However, the then trustees decided that the trust property shall have to be under the control of local trustees

who have to be voted into power by local congregation. The vacancies have to be filled up with the concurrence and approval of Ebenezer Church. Mr. B.Ananth Bhasme died on 18.7.2002 and his son Mr. Daniel Ananth Bhasme has become the Pastor. It is further stated that the respondents 3 to 7 claiming to be the trustees of the respondent No.1 are not allowing the petitioners to make their prayers in the Church situated in the schedule property. The respondents 3 to 7 have no manner of right to continue as trustees, they are not the validly appointed trustees. The respondent No.1 Trust is a Public Charitable Trust and every action of the Trust has to be either approved by all the members of the Trust or necessarily with the sanction of the Court. The respondents 3 to 7 are conducting the activities as if they have the entire control of respondent No.1 Trust.

He has further stated that on the strength of MOU dated 2.9.2011 or agreement alleged to have been executed by the respondent No.1 Trust represented by one Mr. Ananth Bhasme claiming to be the authorized signatory, the respondent No.8 M/s. Vaswani Estates Developers Private Limited is trying to change the nature of the schedule property. The respondents 3 to 7 appear to have executed an

agreement or entered into an agreement with M/s. Nitesh Estates Pvt. Ltd.,-respondent No.9 for development of schedule property in the multi-storeyed building. Based on the said arrangement, the respondent No.9 has put up a huge barricade/ hoarding board in the schedule property claiming that the said property is being developed by it. The action of the respondents is unfair and contrary to the very concept of Public Charitable Trust. The acts and deeds committed by the respondents in collusion with one another amounts to contravening the very object of the Trust Deed. Since the objects of the Trust are charitable in nature, the schedule property cannot be permitted to be utilized by respondent Nos.8 and 9 for construction of multi-storeyed building and creating encumbrance except with the permission of the court.

He has further stated that respondents 8 and 9 are highly influential persons and they may change the nature of the schedule property, in which event the very object of using the premises for performing prayer will be defeated. He has further stated that they have protested the action of the respondents in entering into the arrangement with the builders for using the schedule property into a multi-storeyed

building and a complaint was also lodged in this regard. With this, he has prayed for grant of temporary injunction as prayed in the application.

3. The respondents 1 to 3, 5 and 6 filed objections to the I.A.No.I. The respondent No.9 has filed objections to I.A.No.I. The objections filed by both are similar. The respondents 1 to 3, 5, 6 and 9 have taken up the following contentions in their objections.

The application filed by the petitioners seeking leave u/Sec.92 of CPC is misconceived and not maintainable. It mandates that such petition can be filed by two or more persons having an interest in the Trust. The petitioners are admittedly not claiming any interest in the management or administration of the Trust or its properties, they have no subsisting or real interest. They are only claiming a right to offer prayer in the schedule property. The petitioners are not even the residents of the locality in which the schedule property is situated. The petitioners have not produced any material to show that they regularly offer prayers at the Church. The petitioners have instituted the present proceedings in collusion with the respondent No.8, but the

petitioners have suppressed the material facts and are not entitled to any interim relief. With a view to augment its income and meet its aims and objects, the respondents are intending to develop the multi-storeyed commercial buildings. As the Trust did not have the necessary expertise or financial capacity to undertake construction of a multi-storeyed commercial building, the respondent No.1 Trust identified respondent No.9 to undertake construction of a multi-storeyed commercial building. Accordingly, on 27.10.2011 the respondent No.1 entered into a Memorandum of Understanding ("MOU" for short) with respondent No.1 as a prelude to enter into a joint development agreement in relation to the schedule property. The respondent No.9 entered into a registered Development Agreement dated 27.06.2012 with the respondent No.1. In terms of the Joint Development Agreement, the respondent No.9 is required to develop the property and deliver first respondent's share of constructed area to it. In order to facilitate the development, the first respondent had also agreed to relocate the Church till the completion of the project. Upon completion of the project, it was further agreed that the Church shall be relocated to the constructed area that will fall to the share of

the first respondent. Accordingly, the first respondent has handed over the entire schedule property to the respondent No.9. The respondent No.9 has started developing the land after obtaining sanction/ permissions from the concerned statutory authorities. All the buildings including the Church were demolished much prior to the institution of the present miscellaneous petition. The respondent No.9 has already commenced construction work in the schedule property and has already spent huge sums of money towards the same. As on the date of the filing of the above case, there was no Church. The petitioners have obtained an ex-parte interim order by suppressing these facts. The grant of interim relief by order dated 13.09.2017 severely hampers the project undertaken by the respondent No.9, thereby causing irreparable injury to it.

The respondents further contended that the Pastor of the Church i.e., respondent No.7 has already notified devotees that the Church has been temporarily relocated and that henceforth prayers will be offered at No.29, Bovi Colony, 2nd Cross, Kalkere Main Road, Bengaluru-560 016. The contention of the petitioners that law prohibits change of place of worship to any other purpose by placing reliance on

Sec.3 of the Places of Worship (Special Provisions) Act, 1991 is wholly without merit. The said section 3 prohibits conversion of a place of religious worship from one religion or sect to some other religion or sect. The respondent No.9 has not converted the Church to a place of worship for some other religion or sect. The old Church building which was in dilapidated condition has been demolished in terms of the provisions of the Joint Development Agreement between the respondent No.1 and the respondent No.9.

The respondents further contended that the petitioners have failed to make out a prima-facie case. The right claimed by the petitioners to over prayers in the schedule property does not survive for consideration. The balance of convenience wholly lies in favour of these respondents. No irreparable loss or injury will be caused to the petitioners if I.A.No.1 is rejected. The registered Joint Development Agreement with respondent No.9 was entered into more than five years ago. The petitioners have no interest in the first respondent Trust. With this, the respondent Nos.1 to 3, 5, 6 and 9 prayed to reject I.A.No.I.

4. The respondent No.7 has filed objections to I.A.No.I and contended that the application for temporary injunction is wholly misconceived and bereft of merits. The petitioners are not entitled to any interim relief. The petition filed by the petitioners is not maintainable in the eye of law as the same is filed with a mala-fide intention and with ulterior motive to knock off the schedule property from the respondents. The petition is false, frivolous, vexatious, scandalous and made with a view to harass the respondents. The petition lacks in material particulars and the same is vague and bald. The balance of convenience lies in favour of the respondents. With this, respondent No.7 prayed to reject I.A.No.I.

5. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents 1 to 3, 5, 6, counsel for respondent No.7, counsel for respondent No.8 and respondent No.9.

6. My Predecessor, by his order dated 13.09.2017 has ordered to issue an exparte-ad-interim order of temporary injunction as sought in I.a.No.1 until further orders.

7. The following point arises for my consideration;

“Whether the petitioners / applicants have made out a case for continuing the order of ad-interim temporary injunction dated 13.09.2017 passed on I.A.No.1 ?

8. My answer to the above point is in the affirmative, for the following;

REASONS

9. The petitioners have filed this petition u/Sec.92(1) of CPC seeking leave to file the suit in terms of the plaint attached to the petition. In the suit attached to the plaint, the petitioners are shown as the plaintiffs and the respondents are shown as defendants and petitioners have sought the relief of declaration that the defendants 2 to 7 are not validly appointed Trustees of defendant No.1 Trust and for an order of removal of defendants 2 to 7 from the trusteeship of defendant No.1 ; to appoint the Trustees to the trusteeship of the defendant No.1 in terms of original Trust Deed dated 12.12.1867 and frame the scheme in respect of future administration and appointment of trustees of the defendant No.1 Trust ; to direct the defendants 8 and 9 to

remove the barricade put up in the schedule property by putting the plaintiffs in possession of the schedule property.

10. The schedule property of the said suit and schedule property of I.A.No.I are same. It is the case of the petitioners that till 1963 the British were managing the Trust. The Trust Deed provides for appointment of Trustees by vote by the members of congregation. Without following the procedure, certain persons claiming to be the Trustees and Board members were carrying on the activities of the Trust and also executed certain documents. It is the further case of the petitioners that some time during 1965 onwards, a dispute arose between the Board Members and the alleged Trustees. To resolve the dispute a meeting was convened and the meeting was chaired by the Pastor Mr. Anant Bhasme. In the meeting several issues were raised and the members started making allegations against each other and ultimately nothing fruitful has come out. The minutes were drawn on 9.6.1969. However, it was noticed that the Trustees have not been appointed in terms of the Trust Deed. After the death of Pastor Mr. B. Ananth Bhasme, his son Mr. Daniel Ananth Bhasme became the Pastor. Thereafter, one Mr. A.J.Rathnam and others claiming to be the Trustees executed a Lease Deed

dated 10.09.2004 leasing out the large extent of the property for a paltry sum of Rs.8,000/- per month for a period of 30 years. They also created a document claiming to be the Supplemental Trust Deed dated 21.09.2005. None of the persons have been elected as Trustees in terms of the original Trust Deed. There are several irregularities committed by them and they have misused the Trust property and Trust funds. Ultimately, certain litigations have taken place between the Trust represented by certain group against the other group. One M/s. Vaswani Estates Developers Pvt. Ltd., (respondent No.8) initiated arbitration proceedings u/Sec.9 of the Arbitration and Conciliation Act, before the City Civil Court, Bengaluru in A.A.No.755/2012 for the relief of injunction restraining the respondents therein committing breach of MOU dated 2.9.2011. The alleged MOU claimed to have been executed by certain persons claiming to be the Trustees and the MOU is for Joint Development for lease of 99 years, extendable by another 99 years. It is the further case of the petitioners that the persons belonging to two groups have started fighting against each other and misusing the Trust properties. During the pendency of the litigation, it appears that the respondents have colluded with one another

and they have entered into a secret understanding with M/s. Nitesh Estates Limited (respondent No.9) for construction of commercial complex. It appears that huge amount in crores has been paid to the alleged Trustees and Pastor Daniel Ananth Bhasme. On 16.07.2017, certain persons claiming to be the representatives of M/s. Nitesh Estates Limited prevented the petitioners and other members of the congregation to enter into the property and offer prayer. The other staff of the respondent No.9 informed that they have agreed to purchase the property from the Trustees and others and the petitioners have no right to enter into the premises. The petitioners are having right to use the property and offer prayer. It is the further case of the petitioners that the property of the Trust cannot be misused by any person. The persons who are claiming to be the Trustees are not the validly appointed Trustees in terms of the Trust Deed. Even otherwise, they are misusing the power and position which is disadvantageous to the activities of the Trust. They have committed fraud on the Trust and also misappropriating the property of the Trust and its funds.

11. On the said averments of the petition, even though it is denied by the respondents, it is clear that all is not well

with the respondent No.1 Trust and there are two groups of Trustees in the respondent No.1 Trust. One group entered into a MOU with the respondent No.8 and another group entered into a MOU with respondent No.9 for construction of a commercial complex in the Trust property. The petitioners claim that they are the members of a congregation and they offer prayer in the Church of respondent No.1 situated in the petition schedule property. The advocate for the respondents No.1 to 3, 5 and 6 filed a certificate on the letterhead of respondent No.1 Trust that there are only 35 members / worshipers in the respondent No.1 Church and the petitioners are not the members of respondent No.1 Church. The said Bangalore Baptist Church has been established in the year 1867 and it can not be believed that there are only 35 members / worshipers in the Bangalore Baptist Church, that too in Bangalore in the Church which is situated in the prime locality. Apart from the said certificate signed by the Bangalore Baptist Church, nothing has been produced for example, a Register of the Members etc., to show who are the members of the respondent No.1 Church.

12. The petitioners have stated that they are the members of congregation and offer prayers and use the

property of respondent No.1 Trust. The said aspect has been disputed by the respondents on the ground that the petitioners are the residents of different areas which are far away from the said Church. Merely because the petitioners are the residents of different areas which are away from the Bangalore Baptist Church, it cannot be said that they are not offering prayers and not the members of the congregation of Bangalore Baptist Church. The advocate for the respondent No.7 has produced the copies of e-mail between the petitioner No.1 and respondent No.7 Pastor Daniel Ananth Bhasme. Those e-mails are dated 12.12.2012, 21.12.2012 and 13.01.2013. On looking to the contents of the said e-mails go to show that the petitioner No.1 is a person in association with the Bangalore Baptist Church and he is interested in the protection of the Church/ Trust property. Therefore, at this stage, it can be said that the petitioners are the interested persons and can maintain a petition u/Sec.92(1) of CPC. More over, two applications in I.A.Nos.2 and 5 have been filed by the different persons who wants to come on record. The said persons may also be the interested persons to the present case.

13. The petitioners have filed the present petition u/Sec.92 of CPC and now the question arises is during the pendency of the said petition filed u/Sec.92 of CPC seeking leave, whether an order of injunction can be passed to preserve and protect the Trust property? The said question has been answered by the ***Hon'ble High Court of Allahabad in case of Sri. Vir Digambar Jain Dharmashala and Sri. Mahavir Jain Dharmarth Aushadhalai (Trust) and Anr. Vs. Pramod Kumar Jain and Ors in 2008 (72) ALR 237*** wherein in para No.21, it is held as under;

“In view of the above facts and discussions, I have no hesitation in holding that Court can invoke inherent power conferred by Section 151 of the Code to pass injunction order to preserve and protect the public trust property even pending disposal of application for leave to file suit under Section 92 of the Code. ”

The next question arises is, under what circumstances the court can grant an order of injunction. The same has been considered by the ***Hon'ble Supreme Court in case of Dalpat Kumar and Anr. Vs. Prahlad Singh and Ors. (AIR 1993 S.C.276)***, wherein in para 4, it is held as under;

“It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is

subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/ defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it."

14. The learned Advocate appearing for the respondent No.9 has also relied upon a decision reported in ***ILR 1975 Karnataka page 1957 in case of J. Krishna Moorthy vs. Bangalore Turf Club Ltd.***, wherein it is held as under;

(B) Civil Procedure Code 1908 (Central Act No.5 of 1908) – Order 39 Rules 1 and 2 – The principles for grant or refusal of temporary injunction.

Held:-

The party seeking an order of temporary injunction has to make out a prima-facie case in the sense that the case he has proved calls for an answer. In other words his case may not be frivolous or vexatious, and might appear strong on the balance of probabilities. But that by itself is no ground for any court to issue an injunction

what matters is the balance of convenience. It must be a major consideration. The court must decide in whose favour the balance of convenience lies. The party seeking the aid of the court by way of interlocutory injunction must, as a rule, be able to satisfy the court that its interference is necessary to protect him from that species of injury which the court calls irreparable before the legal right can be established upon trial. The court must pertinently put the question, "will the party suffer irreparable damage if no injunction is granted now?" Last but not the least, the court always must look to the conduct of the party and should refuse to Interfere given in cases where it Acknowledged his right unless his conduct in the matter has been fair and honest and in particular without acquiescence or delay.

Therefore, in view of the above said decisions, it is to be ascertained whether the petitioners have made out a case for grant of temporary injunction. The learned Advocate appearing for the petitioners has contended that as per the provisions contained in Sec.3 of the Places of Worship (Special Provisions) Act, 1991, there is a bar of conversion of place of worship. The said Section 3 reads thus;

3. Bar of conversion of places of worship.- No person shall convert any place of worship of any religious denomination or any section thereto into

a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.”

15. The learned Advocate appearing for the respondent No.9 has contended that what Sec.3 of the said Act prohibits is the conversion of a place of religious worship from one religion or sect to some other religion or sect and section 3 of the said Act will have no application to the conversion of the Church to a place of worship for some other religion or sect. He has placed reliance on a decision reported in ***AIR 2007 HP 77 in case of Satinder Kumar and Ors. V. Union of India*** wherein, at para 11 of the said Judgment, it is held as under;

“Reliance placed by the petitioners on Section 3 of the Act is totally misplaced. Section 3 of the Act prohibits the conversion of any places of worship of a particular religion, religious denomination or section into a place of worship of some other sect of the same religion or of any other religion or sect. What this Section prohibits is the conversion of a place of religious worship from one religion or sect to some other religion or sect. In our considered opinion, Section 3 will have no application when the conversion is for a secular or non-religious purpose. Section 3 of the Act

does not prohibit the conversion of a religious places of worship to a non-religious purpose.”

As per the said decision, even though Section 3 does not prohibit the conversion of a religious place of worship to a non-religious purpose, but the question that arises is, whether the respondent No.1 Trust has obtained leave of the Court for sale of the Trust property. As per Sec.92(f) of CPC, the Trust has to obtain permission of the Court for sale of Trust Property. The Joint Development Agreement entered into between respondents No.1 to 7 and respondent No.9 dated 27.6.2012, a copy of which is produced goes to show that after construction of the commercial complex, the developer i.e., respondent No.9 is entitled to 45% of the share in the Trust property. Therefore, the said aspect amounts to sale of Trust property. The respondents have not placed any material to show that they have obtained the permission of the court for sale of Trust property. Therefore, the said Joint Development Agreement and construction of commercial complex by respondent No.9 as per the said Joint Development Agreement and sharing of the Trust property between the respondent No.9 and respondents No.1 to 7 is not in accordance with the law.

16. The respondents No.1 to 6 and 9 have contended that the Church building on the schedule property has been demolished and now it is an open space and they have also produced the photographs of the said property. Even though there is no Church building in the schedule property, the respondent No.9 cannot proceed with the construction of the building as per the Joint Development Agreement as the respondents have not obtained permission of the Court for sale of the Trust property. Therefore, I hold that the petitioners have made out a prima-facie case. Further, the petition u/Sec.92 of CPC filed by the petitioners is not only on their behalf, but also on behalf of the persons interested in the respondent No.1 Trust. If the commercial complex is constructed on the schedule property, it affects the rights of the persons interested in the respondent No.1 Trust and also the persons who offer prayer in the Church building which was situated on the schedule property. If the injunction is granted, there will be only a monetary loss to the respondents, which can not be said to be an irreparable loss. If the injunction is refused, the right of the petitioners and the other interested persons in the respondent No.1 Trust will be affected, which cannot be compensated. Therefore, balance of

convenience lies in favour of the petitioners and the petitioners will be put to irreparable loss if injunction is refused or not continued. This Court has granted ad-interim order of temporary injunction as sought in I.A. No.I until further orders by order dated 13.09.2017. Therefore, the said order requires to be continued. Accordingly, I answer the point in the affirmative and pass the following;

O R D E R

I.A.No.I, filed under Order 39 Rules 1 and 2 R/w. Sec.151 of the Code of Civil Procedure, 1908 is hereby allowed.

The order of temporary injunction dated 13.09.2017 granted by this Court is continued till disposal of this case.

(Dictated to the Judgment Writer, transcribed and computerized by her, the same is corrected, signed and then pronounced by me in the open Court on this the 24th day of January, 2018).

(SHIVASHANKAR B. AMARANNAVAR)
Principal City Civil & Sessions Judge,
Bengaluru.

*pst/-