

**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, MYSURU**

Dated this the 12th day of June, 2024

:: PRESENT ::

Sri Ravindra Hegde, M.A., LL.M.,
Prl. District & Sessions Judge, Mysuru.

MISC. No.47/2023

PLAINTIFFS : Goddess Maramma a.k.a
Vidhinagaradamma,
Represented by its Archaka &
Others.

**(By Sri Mahadeva Deshak,
Advocate)**

-Vs-

RESPONDENTS Shri Vidhinagaradamma Trust
Represented by its Trustees

(By Sri H.V.S., Advocate)

I.A.No.5:

**APPLICANT/
PLAINTIFFS** : Goddess Maramma a.k.a
Vidhinagaradamma,
Represented by its Archaka &
Others.

-Vs-

**OPPONENT/
RESPONDENTS** : Shri Vidhinagaradamma Trust
Represented by its Trustees

ORDERS ON IA NO. 5

This application under Order VI Rule 17 of CPC is filed by the applicant/petitioner seeking permission to carry out amendment in the petition and plaint as per annexure.

2. In the affidavit in support of the application the 2nd petitioner has stated that, the petitioners are the successors in interest of community owned temple known as Hebbare Temple dedicated to the deity of Goddess Maramma. It is stated that the temple and its property of 1st petitioner is the deity Goddess Vidhinagaradhamma also known to be Goddess Maramma presiding over all that piece and parcel of structure of temple and open land. It is stated that, one Sri Srikanta Murthy claiming to be President of 1st defendant Trust had eye on the temple in order to usurp the same got involved in the affairs of the gymnasium into litigation. It is stated that he along with other petitioners and other interested parties are having vested rights. It is also stated that, the 1st petitioner compelled to file the application to delete the relief that were erroneously coined and substitute the same in appropriate format, that is allowed under Section 92 of CPC. It is further stated that, the petition under Section 92 to accord leave is in initial stage of considering the leave to be granted to the petitioner. There is no right that has accrued and much acclaimed right claimed by the respondent trust. It is stated that, the Trust having been created fraudulently and operating in the name of plaintiff where the instrument does not provide the same nor the right, title and interest has passed to the trust that is substantially harmful in society. It is stated that, therefore, the proposed amendment to rectify erroneously coined relief is placed before the court without changing nature of suit or altering or modifying essence of suit or petition. It is

stated that, proposed amendment does not cause ouster of jurisdiction of this court.

3. Objection is filed by the 2nd respondent stating that, application is not maintainable. It is stated that, in the affidavit of earlier application in IA No.4 it was stated by the petitioner that there is defect in the petition which can be neither modified or altered. It is stated that, against his own admission, the applicant has filed this petition which is not maintainable. It is also stated that, the petitioner himself has sworn in para No.7 in support of IA No.4 that, it is a futile exercise and wasting precious judicial time of this court and being obstinate of continuing the suit serves no purpose. It is stated that, the applicant know the truth that they have not approached the court with clean hands. It is stated that, to avoid the orders on main petition, the applicants deliberately have been filing applications one after another which are frivolous. It is stated that, the applicants are trying to disturb the respondents' peaceful possession and enjoyment of petition schedule property stating that matter is pending before the court. It is stated that it is a tactics of the petitioner to keep the petition alive at any cost and keep reporting the police and to see that respondents are troubled and to see no Jathra is made regarding Vidhinagaradamma by respondents. It is further stated that, amendment will not help the petitioner to determine the maintainability of the petition. On these grounds, 2nd respondent has prayed to dismiss the application. It is stated that petition

under Section 92 of CPC, be posted for hearing on maintainability.

4. Now the points that arise for my consideration are:

1. Whether amendment to the petition and to the plaint filed along with the petition is to be permitted as prayed in IA No.5 ?

2. What order ?

5. Heard both counsels. Perused records.

6. My answer to the above points are :

Point No.1 : In the negative.

Point No.2: As per final order for the following:

REASONS

7. **POINT NO.1:-** This Miscellaneous petition is filed under Section 92 of CPC, seeking permission to file the suit against the defendants. Along with the petition, the plaint for the proposed suit is also filed by the petitioners. During the pendency of this petition, the petitioners have filed the present application under Order VI Rule 17 of CPC, seeking permission to amend the pleadings of petition under Section 92 by including Para No.21-A and 21-B. The petitioners are also seeking permission to amend the plaint by replacing prayer No.1 and 2 and also inserting new prayer column 1-A and prayer column 1-B and also seeking permission to amend the plaint by including Para No.24-A and

24-B. In the affidavit the petitioners have reiterated their contentions and stated that amendment is very necessary and they are compelled to file the application to delete the relief that were erroneously coined and substitute the same in appropriate format allowed under Section 92 of CPC. It is also stated that, the trust having been created fraudulently and operating in the name of plaintiff and no right, title and interest has passed to the trust etc. The application has been opposed by the respondent No.2 by filing objections in detail and contending that the petition itself is not maintainable as admitted by the petitioners themselves in their earlier application.

8. On looking to the petition which is filed under Section 92, petitioners are seeking permission to file the suit against the respondents. In the plaint which is filed along with this petition, the petitioners/plaintiffs are seeking declaration that the acts of the defendant in claiming any form of right over the 1st plaintiff temple or adjoining land appurtenant thereto is illegal, null and void. Second prayer is to divest the defendant trust of all its aims and objects and in so far as the 1st plaintiff deity is concerned from the deed of trust dated 27.12.2021. Plaintiffs are also seeking the injunction restraining the defendant or its trustees from raising monetary benefits and to direct the defendant and its trustees to return all the financial benefits received by it and restraining the defendant and trustees, from interfering in plaint schedule property in any form. For seeking these reliefs from the court against the 1st defendant trust and its trustees, suit is filed by Goddess Maramma, as plaintiff No.1 and other 6 plaintiffs by

contending that, it is a trust matter. The petition is filed under Section 92 along with the plaint, seeking leave of the court to institute the suit. Now, in this suit the plaintiffs intends to amend the plaint and to delete the prayer column 1 and 2. Now, by this amendment, petitioners are seeking the relief of declaration that suit schedule property does not vest with 1st defendant trust and decree obtained in O.S. No.1427/2010 and O.S. No.62/2016 without making the plaintiff as a party is by fraud and misrepresentation and want to seek the relief of declaration that 1st defendant trust is formed fraudulently by forging instrument of trust deed. With these reliefs necessary pleadings are sought to be included in the petition as well as in the plaint by inserting two paragraphs.

9. As rightly contended by the plaintiffs, the petition is at the initial stage. The leave is not yet granted by the court to institute the suit. The petition filed under Section 92 seeking leave of the court to file the suit is under consideration before this court. At this initial stage itself, petitioners are seeking permission to amend the plaint and petition by substituting two prayer columns and also intend to include two more prayers etc. The maintainability of the petition under Section 92 itself is disputed by the respondent. It appears that, earlier the petitioners had filed IA No.4 under Order 23 Rule 1(3)(a) of CPC seeking permission to withdraw the suit with liberty to file fresh one and said application in IA No.4 has been rejected by this court. The respondents are highlighting the contentions of the petitioners in IA No.4, wherein the petitioners themselves have

stated that, the formal defect in the petition can neither be modified, altered or amended and it is a futile exercise and wasting precious judicial time of this court and continuing the suit serves no purpose. Hence, the petitioners themselves in IA No.4 have contended that this petition cannot be modified, altered or amended and continuing the suit serves no purpose. While rejecting IA No.4 filed by the petitioners, seeking for withdrawal of the suit with liberty to file fresh suit, Court held that if such liberty is given, the specific defence taken by the respondents about the maintainability would be affected. After disposal of the said application and posting the matter for consideration on main petition, the petitioners instead of addressing arguments on main petition under Section 92, have come up with this application, seeking amendment.

10. Since maintainability of the petition under Section 92 itself is challenged, unless the petition is held to be maintainable and Court holds that the leave should be granted to the petitioners to file the suit, the amendment to the plaint cannot be permitted. It is stated in the affidavit of the petitioners that the amendment is necessary to delete the relief that were erroneously coined and substitute the same in appropriate format that is allowed under Section 92 of CPC. Therefore, according to the petitioners/plaintiffs, amendment is sought to be made to bring the suit within Section 92 of CPC,.

11. On looking to Section 92, in case of 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, two or more persons having an interest in the trust can institute the suit by obtaining the leave of the Court, to obtain a decree for removing any trustee, appointing a new trustee or vesting any property in a trustee, directing accounts and inquires, declaring what proportion of the trust property shall be allocated to any particular object of the trust, authorising the whole or any part of the trust property to be let, sold or mortgaged etc., or setting a scheme and granting such other relief. Therefore, entire Section 92 deals with interest and welfare of the Trust and person who is seeking the relief must have an interest in the Trust and it should be for better interest of the trust and its property, including appointing or removing of trustee and also to set a scheme for the Trust.

12. On looking to the entire pleadings of the plaintiffs/petitioners in the petition under Section 92 and also proposed plaint which is sought to be filed by taking leave of the court, petitioners are not having any interest in the Trust or its management or appointment of trustee or vesting or securing any property in a trustee etc., On the other hand, petitioners are disputing the existence of the Trust by contending that the Trust deed itself is fraudulent and to declare that 1st defendant is formed fraudulently by forging instrument of trust deed and to declare that the suit schedule property does not vest with 1st defendant trust nor its trustees and the defendant trust or its

trustees do not have any manner of right, title or interest over the Trust property. Hence, prayer of the plaintiffs sought in the proposed suit is entirely against the Trust and by a third party, who do not have any interest in management or welfare of the Trust and on the other hand, who disputes existence and formation of the Trust itself. None of the prayer sought by the plaintiffs fits in the Clauses of Section 92 of CPC. The plaintiffs who are disputing existence of the Trust by contending that it is fraudulently created and dispute that schedule property belongs to the trust cannot have recourse to Section 92 of CPC. Petitioners are not interested in removing, appointing trustees or vesting any property in a trust or its management seeking accounts etc. As such, the suit and petition that has been filed by the petitioners, claiming their own right in the schedule property as against right of Trust, cannot be, prima-facie, brought under Section 92 of CPC.

13. On looking to the very object and purpose of Section 92, this section is to give leave to a person who is interested in welfare of the trust and its proper management to file the suit for avoiding mismanagement and it is not for destruction of the trust. A person who is not interested in the welfare of the particular trust or its management and who disputes the existence of the trust itself has remedy elsewhere and cannot seek leave under Section 92.

14. On looking to the pleadings of the plaintiffs/petitioners as seen in the plaint and also on looking to

the proposed pleadings after amendment, both are not in conformity with Section 92 and as rightly contended by the respondents, maintainability of Section 92 petition itself is doubtful with amendment or without amendment. When the maintainability of petition itself is doubtful and even proposed amendment also do not appears to change the status, amendment as prayed cannot be permitted. As such, amendment sought by the plaintiffs/petitioners cannot be said to be necessary or proper for the purpose of determining the real question in controversy between the parties and very maintainability of the petition as well as the proposed suit under Section 92 of CPC is doubtful. Accordingly, point No.1 is answered in the **negative**.

15. POINT NO.2:- For the discussion made on above facts, following order is passed:

ORDER

I.A.No.V filed under Order VI rule 17 of CPC
by the petitioners is dismissed.

[Dictated to the Stenographer; transcript thereof corrected and then pronounced by me in the Open Court, on this the **12th** day of **June 2024**]

[Ravindra Hegde]
Pri. District and Sessions Judge,
Mysuru.
