

KAMS010070242019



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

Dated this the 2nd day of January, 2024

:: PRESENT ::

Smt. Prabhavathi M. Hiremath, B.A., LL.B., (Spl)
Prl. District & Sessions Judge, Mysuru.

O.S.No.8/2019

PLAINTIFFS : Sri.H.Swamy and others

-Vs-

DEFENDANTS : Sri.Bhogeshwara Trust & others

I.A.No.9:

APPLICANT : Sri.B.M.Shivaswamy

-Vs-

OPPONENTS : Sri.H.Swamy & others

I.A.No.10:

APPLICANT : Sri.Balasubramanyam T.C.
PA Holder of Defendant No.17(c)

-Vs-

OPPONENTS : Sri.H.Swamy & others

COMMON ORDER ON I.A. 9 and 10

I.A.No.9 is filed by the Defendant No.15 under Order 14 Rule 5 r/w 151 of CPC to delete all issues framed in this case and to frame issues with regard to the maintainability of the suit and about the limitation.

2. In support of the application, the Defendant No.5 Sri.B.M.Shivaswamy has filed affidavit stating that in para No.21 of the plaint itself, it is pleaded that the ownership and possession will be established by filing a separate suit. Therefore, the relief sought in the present suit under Section 92 of CPC cannot be sustainable unless and until the ownership and possession of the suit schedule property is decided. The Defendant No.2 in the written statement has specifically averred that he is the absolute owner of the property. Therefore, the Plaintiffs are required to get adjudicated a title in possession of the suit schedule property by separate suit. Therefore, framing of issue is to that effect is necessary.

3. I.A.No.10 is filed by Power of Attorney Holder of the Defendant No.17(c) under Order 14 Rule 5 r/w Section 151 of CPC to frame the issue with reference to whether the Defendant No.16 and LR of Defendant No.17 proves that they are the bonafide purchasers of property respectively purchased by them from Defendant No.2.

4. In support of the application, the Power of Attorney Holder of the Defendant No.17(c) Sri.Balasubramanyam T.C. has filed an affidavit stating that in the written statement filed by the Defendant No.16 and 17 they have taken specific contention that they are the bonafide purchasers of the lands in Sy.No.228/2 which was the self acquired property of the Defendant No.2. In view of the contention in the written statement framing of additional issues is necessary and prayed to allow the application.

5. The advocate for the Plaintiff has filed separate objections to both the applications stating that the original Misc.Petition filed under Section 92 of CPC ought to have been dismissed by this Court on the ground that the suit as presented is not maintainable under Section 92 of CPC. Challenging the same Misc.First Appeal No.5021/2018 has been preferred before the Hon'ble High Court of Karnataka and the same was came to be allowed. The Hon'ble High Court has directed for registration of the suit. The aspect of the maintainability is already considered and as per the directions of Hon'ble High Court of Karnataka, the suit is registered. Therefore, there is no question of hearing on maintainability of the suit. The question is breach of trust, the aspect of the breach of trust inclusive of various commissions and omissions of the Trustees. Therefore, it is not a suit for title to the property, there is no need to seek for declaration of

title, the Defendant No.2 has already declared that plaintiff schedule property is the Trust property in W.P.No.30108/2000 and prayed to dismiss the application.

6. For I.A.No.10 the Plaintiff has filed objections stating that the application is not maintainable, the question of claiming the status of bonafide purchaser by Defendant No.16 and 17 will not arise in the suit. The only question that has to be determined is whether the plaintiff schedule property is a Trust property. Once it is held that it is a trust property, once is trust is always a trust. Character of the Trust property cannot be changed by illegal alienation. Therefore, framing of issue sought for by the Defendant No.17(c) is not at all necessary and prayed to reject the application.

7. Heard both sides. The written submissions have also filed.

8. The Points that arise for my consideration are;

1. Whether framing of issues regarding the maintainability of the suit and limitation as sought for is necessary ?
2. Whether framing of issues as sought for under I.A.No.10 is necessary ?
3. What order?

9. My findings on the above points are as hereunder;

Point No.1: **Partly in the Affirmative**

Point No.2: In the **Negative**

Point No.3: As per final order
for the following;

:: REASONS ::

10. **Point No.1** :- From going through the pleading of the parties it is clear that the Plaintiffs have sought for the relief to draw a scheme for the proper management of the schedule properties, remove the Defendant No.2 to 6 from the management of the schedule properties, to appoint a new Board comprising of new Trustees for management of the schedule properties and direction to deposit the compensation amount received from MUDA, Mysuru. With reference to acquisition of properties, enquiry into the accounts relating to the management, direct new Board Members of Trustees to manage buildings, temples, conduction of daily poojas and festivals.

11. In para No.21 of the plaint the Plaintiff have averred as under:

“The Plaintiffs have also reserve the right to file separate suit relating to certain reliefs in respect of the

ownership and possession of the schedule properties of first Defendant Trust and Villagers, relating to schedule properties, which are not covered under 92 of CPC.

12. In the written statement of the Defendant No.2 filed during his lifetime in the year 2020 in para No.3 he has reproduced para No.21 of the plaint and specifically contended that the relief claimed in the plaint can be decided only after the decision by any Competent Court of law as the Plaintiffs themselves have undertaken to do so as per para No.21 of the plaint. The prayer (g) and (h) cannot be granted for the reason that temples are the Mujurai temples and they are under the control and management of the State. In para No.6 of the written statement he has specifically contended that the suit is barred by law of limitation on many counts. In para No.7 he has submitted that the suit is not maintainable as there is no Trust in the eye of law and there is no property whatsoever for the purpose of formation of Trust.

13. From going through the issues framed by my Predecessor in office on 16.04.2022 it is clear that there is no issue framed with reference to whether the suit is maintainable as averred by 2nd Defendant and on limitation point raised by 2nd Defendant.

14. Now the question is whether framing of those two issues is necessary is to be seen. The learned Advocate for the Plaintiffs vehemently argued

that already issue of maintainability of suit is decided by the Hon'ble High Court of Karnataka in Mis.First Appeal No.5021/2018. From going through the order passed by the Hon'ble High Court of Karnataka in Misc. First Appeal dated 27.09.2019, it is clear that challenging the order passed by this Court on 29.05.2018 in Misc.No.8/2012, the said Mis. Appeal was preferred. The said Misc. Appeal was came to be allowed by setting aside the order passed by this Court. The petition filed under Section 92 of CPC in Mis.No.8/2012 was came to be allowed. The Appellant are permitted to sue the Respondents for the relief claimed in the plaint and this Court is directed to register the suit and adjudicated the same in according with law.

15. His Lordship has allowed the said Misc. First Appeal by observing that "the appellants assert the existence of constructive trust so far as the lands in question are concerned. But, the contention of respondent No.2 and other respondents is that after vesting of lands with the Government pursuant to coming into force of Mysore (Religious and Inams) Abolition Act and registration of cultivation rights in favour of respondent No.2, the original character of possession held by respondent No.2 extinguished and he became the absolute owner".

16. It is further observed that, "the appellants do not say or have not questioned the grant of cultivation rights to respondent No.2. What they say is that respondent No.2 applied for cultivation rights on behalf of the villagers so that the status that existed before the vesting of land with the Government would continue even after grant of cultivation rights. They vehemently assert that respondent No.2 did make a representation even before Land Tribunal that he was cultivating the lands on behalf of the villagers and even that was the stand he took in the statement of objections filed by him in the writ petition and thereby he cannot contend that the lands belong to him absolutely after grant of cultivation right. I find that these averments in the petition under section 92 are sufficient enough to hold that a constructive trust is in existence in so far as the properties are concerned".

17. Further observed that, "it is true that these properties do not find a place in the trust deed, but there is no bar for holding those properties constructively for achieving the objects of the trust that are of religious and charitable in nature. Admittedly, respondent No.2 has sold the lands; It is in this background that the appellants complain breach of trust. Therefore, the petition averments clearly disclose requirements for permitting the appellants to sue for the reliefs claimed in the plaint annexed to the petition under section 92 CPC".

18. Ultimately, his lordship observed that, "therefore, from the foregoing discussion, I come to the conclusion that the Principal District Judge, Mysuru, has misdirected himself in giving a finding with regard to title of respondent No.2 at the initial stage. His order is not sustainable. The averments in the petition disclose existence of a trust and allegations about breach of trust. The appellants need to be permitted to sue the defendants".

19. From going through the above said reasonings given by Hon'ble High Court of Karnataka, it is clear that his Lordship has considered only whether the leave can be granted to the Appellants to file the suit under Section 92 of CPC or not, but not on the point that whether the suit is maintainable. Therefore, the arguments advanced by the learned Advocate for the Plaintiffs is not acceptable one. In view of the pleadings of the parties, the issue with reference to the maintainability of the suit and limitation are required to be framed as additional issues, but not by deleting the issues already framed by my predecessor in office. Therefore, **point No.1 is answered partly in the Affirmative** as there is no need to delete the issues already framed.

20. **Point No.2:** Under I.A.No.10 the Defendant No.17(c) sought for framing of additional three issues with reference to whether the Defendant No.16 and LR

of Defendant No.17 proved that they are the bonafide purchaser of respective properties purchased by them from Defendant No.2 for valuable consideration. It is admitted that the Misc. Petition is filed under Section 92 of the CPC. Thereafter, the suit is registered under Section 92 of CPC. The relief are required to be claimed as provided in sub-section 1 and sub-section (a) to (h) of Section 92 of CPC. In the case of any 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, may institute a suit, whether contentious or not, in the Principal Civil Court of original jurisdiction to obtain the decree with reference to, removing any trustee, appointing a new trustee, vesting any property in a trustee, directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any Trust property in his possession, directing accounts and inquiries, declaring what proportion of the Trust property shall be allocated to any particular object of the Trust, authorizing the whole or any part of the Trust property to be let, sold, mortgaged or exchanged, settling a scheme, granting such further or other relief as the nature of the case may require.

21. Except the above said reliefs in a suit under Section 92 of CPC the other reliefs cannot be granted.

Even though in the written statement of Defendant No.16 and 17 they have taken contention that they are the purchaser for valuable consideration of the portion of the suit schedule properties. Those issue cannot framed as such this Court is be dealing with suit under Section 92 of CPC, cannot decide whether they are the bonafide purchaser or not. Therefore, framing of proposed issue No.1 to 3 as mentioned in application by the Defendant No.17(c) as additional issues is not at all necessary. For the above said reason **point No.2** is answered in the **negative**.

22. **Point No.3:-** In the result, I proceed to pass the following;

ORDER

The I.A.9 filed under Order 14 Rule 5 of CPC is allowed in part. For two additional issues are framed;

1. Whether the suit is maintainable without declaration of schedule properties are the Trust properties by the Competent Civil Court ?
2. Whether the suit is barred by limitation?

I.A.No.10 filed under Order 14 Rule 5 of CPC, is hereby dismissed.

(Dictated to the Stenographer Grade-I, transcribed by her, corrected and then pronounced by me in the open court on this the 2nd day of January 2024)

[Prabhavathi M. Hiremath]
Pr. District & Sessions Judge, Mysuru.

