

KAMS010070242019



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

Dated this the 13th day of August, 2024

PRESENT

Sri. Ravindra Hegde, M.A., LL.M.,
Principal District and Sessions Judge,
Mysuru.

O.S./8/2019

Plaintiffs:

1. H.Swamy, aged about 58 years, S/o Honnagiri Gowda,
2. Kenche Gowda, aged about 55 years, S/o Dase Gowda @ Honnegowda,
3. Swamy Gowda, aged about 55 years, S/o Boralinge Gowda,
4. Rama Linge Gowda, aged about 64 years, S/o Sidde Gowda,

All are residents of Bogadi Village,
Mysuru Taluk.

5. Mukunda S/o Late Krishnoji Rao, aged about 54 years, R/at Door No.92, 5th Main, 6th Cross, Vidyaranyapuram, Mysuru City.

(**By Sri. O.Sham Bhat, Advocate**)

Vs.**Defendants:**

1. Sree Bogeshwara Trust, A Registered Public Trust, having its Office at Botgadi Village, Mysuru Taluk, represented by its Trustee Mahadeve Gowda.
 2. Mahadeve Gowda, since dead by his L.Rs:
 - (a) Geetha B.M. D/o Late B.S.Mahadeve Gowda, aged about 46 years, R/at # 184, 8th Cross, Ramamandira Road, Bogadi Village, Kasaba Hobli, Mysuru Taluk.
 - (b) B.M.Asha D/o Late B.S.Mahadeve Gowda W/o Raghu, aged about 42 years, R/at Mundugadore Village, Arakere Hobli, Srirangapatna Taluk, Mandya District.
 - (c) Gayatri W/o Late B.S. Mahadeve Gowda, aged about 60 years,
 - (d) Rekha D/o Late B.S. Mahadeve Gowda, aged about 40 years,
 - (e) Savitha D/o Late B.S. Mahadeve Gowda, aged about 38 years,
 - (f) B.S.Karthik S/o Late B.S.Mahadeve Gowda, aged about 35 years,
- 2(c) to (f) are R/at Narayana Medicals Building, Gaddige Main Road, Bogadi, Mysuru.

3. B.P.Thibbe Gowda, aged about 74 years, S/o Late Papegowda @ Chikkegowda,
4. Swamy, aged about 58 years, S/o Vykunte Gowda,
5. Shankara, aged about 57 years, S/o Chamundegowda @ Hedamanase Gowda,
6. Rache Gowda, aged about 75 years, S/o Late Kullegowda,
7. B.H.Swamy, aged about 57 years, S/o Late Sonnegowda,
8. Doddalinge Gowda
(deleted since dead as per the order of the Court)
9. Marisidde Gowda, aged about 61 years, S/o Late Siddalinge Gowda,
10. Shivalinge Gowda, aged about 64 years, S/o Late Kalegowda,
11. Putte Gowda, aged about 69 years, S/o Siddegowda,
12. B.S.Swamy, aged about 55 years, S/o Late Sonnegowda,

Defendants No.2 to 12 are R/at Bogadi Village, Mysuru Taluk.
13. M.Ramanath Shenoy, aged about 66 years, S/o Late M. Govinda Rao, R/at No.967, 'Amarnath', J.L.B. Road, Lakshmipuram, Mysuru.

14. M.A.Sudhir Kumar, aged about 60 years, S/o Late M.S.Anantharajaiah, R/at No.565, Budha Marga, Siddarthanagara, Mysuru.
 15. B.M.Shivaswamy, aged about 66 years, S/o Mahadevappa, R/at Bilugali Village and Hobli, Nanjangud Taluk.
 16. A.S.Balamurali Krishnan, aged about 58 years, S/o A. Shivaswamy Iyer, R/at No.175/13, 10th 'B' Main, V Cross, I Block, Jayanagara, Bengaluru.
 17. M.Galappa, since dead by his L.Rs:
 - (a) Lakshminarasamma W/o Late M.Galappa, aged about 71 years,
 - (b) M.G.Nagaraju S/o Late M.Galappa, Aged about 51 years,
 - (c) M.G.Somashekhara S/o Late M.Galappa, aged about 49 years,
 - (d) Padma W/o Late M.Galappa, aged about 43 years,
- All are R/at No.41, Tata Silk Farm, Kanakapura Main Road, Basavanagudi, Bengaluru.
18. K.R.Ramachandre Gowda, aged about 38 years, S/o K.R.Rangaiah, R/at No.1238, III Cross, Gange Road, Chamaraja Mohalla, Mysuru.

(**D.1, 3 to 7, 9 to 12 - Exparte**
D.2(c), (d), (f) by Sri. RRM, Advocate

D.2(a), (e) – Absent
D.2(b) by Sri.HJ, Advocate
D.8 - Dead
D.13 by Sri. MRA, Advocate
D.14 by Sri. RRN, Advocate
D.15 by Sri.MS, Advocate
D.16, 17(a) to (d) by Sri. S.P., Advocate
D.18 by Sri. NLN, Advocate)

IN I.A. No.14/2024

Applicant: B.M.ShivaswamyDefendant No.15

Vs.

Opponents: H.Swamy & othersPlaintiffs

ORDER ON I.A. No.14

This application under Order 14 Rule 2 of C.P.C., is filed by the defendant No.15, praying to treat additional issue as preliminary issue.

2. In the affidavit in support of the application, the defendant No.15 has stated that, on the application filed by defendant No.15, the additional issues were framed and one of the additional issue is regarding maintainability of the suit. It is stated that, it is just and necessary to treat the additional issue of maintainability as preliminary issue and to give finding on the said issue.

3. Objection has been filed by the plaintiffs stating that the Hon'ble High Court in M.F.A. No.5021/2018 has set aside the order of dismissal of Miscellaneous No.8/2012 and directed registration of the suit and in the said order, the Hon'ble High Court has clearly observed that the averments in the petition under Section 92 of C.P.C. are sufficient enough to hold the constructive trust in existence, in so far as the properties are concerned. It is stated that, in view of this observation, the additional issue regarding maintainability of the suit cannot be considered as the preliminary issue and the case is to be tried. It is stated that, the Court have to now consider the aspect of constructive trust in the light of the averments in the plaint coupled with documents produced before the Court. Without trial, both the additional issues cannot be disposed. It is stated that, as additional issues require trial, same cannot be considered as preliminary issue and it is to be tried with other issues. On these grounds, the application is prayed to be dismissed.

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

1. Whether the additional issue No.1 and 2 are to be treated as preliminary issue as prayed in I.A.No.14 ?

2. What order ?

5. Heard both the counsels. Perused the 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:**

The plaintiffs had filed Miscellaneous No.8/2012 under Section 92 of C.P.C., seeking permission to file the suit against the Trust and the said Miscellaneous Petition was dismissed and then in M.F.A. No.5021/2018, the Hon'ble High Court has set aside the order of this Court and held that the averments in the petition under Section 92 of C.P.C. are sufficient enough to hold a constructive trust in existence in so far as the properties are concerned and permitted the petitioners to sue the defendants for the reliefs claimed in the plaint and directed this Court to register the suit and adjudicate the same in accordance with law. Thereafter, present suit is registered and the defendants have filed the written statement. The Issues are framed. Subsequently, on the application filed by the defendant No.15, additional issue No.1 and 2 are framed. The additional issue No.1 is about maintainability of the suit without declaration of schedule properties as Trust properties by the competent Court and the additional issue No.2 is about bar of limitation to the present suit. Now, the present application is filed praying to consider these issues which affects the maintainability of the suit as preliminary issue, which has been opposed by the plaintiffs. In the affidavit in support of the application, the defendant No.15 has stated that, as the issue is regarding maintainability of

the suit, it is necessary that this issue is to be treated as preliminary issue.

8. On looking to the contentions of the parties, the case of the plaintiffs is that, the suit schedule properties are the properties attached to the religious temples situated at Bogadi Village, Mysuru Taluk and all the residents including plaintiffs and defendants No.2 to 12 and their ancestors were jointly cultivating the schedule properties as tenants under the leadership of late Yajaman Siddegowda and thereafter under 2nd defendant with a common object to derive income from the said lands for the purpose of maintaining all the temples and also to fulfill the bonafide and common objects of the villagers. According to the plaintiffs, after coming into force of Karnataka Religious and Charitable Inaam Abolition Act, 1955, all the devotees, with a common object and intention have authorized 2nd defendant to file application claiming occupancy right over the schedule properties for and on behalf of the villagers and the occupancy right was granted as per the authorization given by the residents and devotees of the Village to the 2nd defendant and even 2nd defendant had stated that the properties are cultivated by the villagers jointly and he has filed the application for and on behalf of the villagers. The plaintiffs contend that, the grant is in favour of all the villagers for the objects mentioned in the plaint and for betterment of the temple and do not confer any independent right or title or possession to the 2nd defendant. According to the plaintiffs, the defendant No.2 has created a Public Trust as

desired by the devotees and residents in the name of "Sri Bogeshwara Trust" i.e. the 1st defendant as per the common understanding and common object of all the villagers and devotees and defendants No.3 to 12 and plaintiffs No.1 to 3 were appointed as Trustees. However, in the Trust Deed, the said properties were not included and regarding that when the villagers approached the 2nd defendant, the 2nd defendant has informed that, in W.P. No.30108/2000, he has filed objection wherein he has declared about creation of the Trust and his intention to transfer all the lands to the Trust and he has no personal claims. With these averments, the plaintiffs contend that, constructively the said properties are the Trust properties of the 1st defendant. The plaintiffs contend that, the 2nd defendant has alienated some lands and compensation received for acquisition of the land are not deposited in the account of the 1st defendant etc. and plaintiffs contend that the 2nd defendant is acting against the interest of the Trust and has disposed off some of the properties by Sale Deeds as mentioned in the plaint, though he is not having any individual right or interest over the schedule properties and the Sale Deeds executed by 2nd defendant in favour of defendants No.13 to 19 are illegal etc. With these averments, the plaintiffs have prayed for drawing a Scheme for better management of the schedule properties and to remove the defendants No.2 to 6 from Management and to appoint a New Board and to direct vesting of schedule properties and compensation amount received from MUDA relating to acquisition of properties of 1st defendant Trust to the New Board

of Trustees and to direct enquiry into accounts and to direct new Board of Trustees to manage the Temples etc. The contesting defendants have denied that the said properties are the properties of the 1st defendant Trust and that 2nd defendant had no right to alienate the properties etc. In the plaint, at Para No.21, plaintiffs have stated that, they reserve right to file separate suit relating to certain reliefs in respect of ownership and possession of schedule properties of 1st defendant Trust and villagers, relating to schedule properties, which are not covered under Section 92 of C.P.C.

9. Though in the affidavit in support of the application, no detailed contentions are found, the contentions in written statement and also the submissions made in the course of arguments made by learned counsel for defendant No.15 would reveal the contentions of the defendant No.15. The defendant No.15 is contending that the grant in favour of defendant No.2 is not in favour of the defendant No.1 Trust and the Trust was not even existing at the time of grant of the land. The Trust of 2nd defendant appears to have been formed during 2003 and the grant was made much earlier in favour of defendant No.2. However, the plaintiffs contend that, in the declaration and also by his acts and omission, the defendant No.2 had made it clear that, it was on behalf of the villagers and devotees of the temples, he has filed the declaration. By considering these contentions, the Hon'ble High Court in M.F.A. No.5021/2018 has found that these averments in the plaint and the Miscellaneous

Petition are enough to hold constructive Trust in existence in so far as properties are concerned. The properties referred are the suit properties. Whether the defendant No.2 has filed declaration individually or for and on behalf of the villagers and devotees of the temple as a Trustee and whether the constructive Trust is created at that time, which subsequently came into existence as registered Trust in 2003 etc., may have to be decided through evidence to be recorded in the course of trial. Therefore, on the ground that grant was earlier and Trust registered is of latter date and that the grant was made in the name of defendant No.2 cannot be sufficient at this stage to hold that suit is not maintainable. As these points have to be decided through evidence, trial is necessary to decide the issue regarding maintainability on this ground.

10. Another ground on which the defendant No.15 is contending that the suit is not maintainable is that, in the plaint in Para No.21, the plaintiffs have stated that, they reserve right to file separate suit relating to certain reliefs in respect of ownership and possession of schedule properties, which are not covered under Section 92 of C.P.C. and therefore, until the declaration of title to the property as Trust property by a competent civil Court is obtained, suit is not maintainable, as in the Trust Deed also, the said property is not included. However, on clear reading of Para No.21 of the plaint, it says that, for the reliefs which cannot be granted under Section 92 of C.P.C., the plaintiffs reserve their right to seek remedy in separate

proceedings. Whatever the remedy that is available under Section 92 of C.P.C. is sought to be claimed in the present suit itself. Therefore, Para No.21 of the plaint is not fatal to the claim of the plaintiffs in the present suit. The plaint averments clearly say that, the suit properties are the properties of the Trust and by declaration of defendant No.2 in the objection filed in a Writ Petition and also by his declaration, the suit properties are the properties of Trust though not specifically included in the Trust Deed as properties of the Trust. Therefore, it appears that, the plaintiffs are contending that, by acts and omission, constructively these properties are considered as Trust properties, as on behalf of the constructive Trust, the declaration was filed by defendant No.2 for grant of property on behalf of villagers and devotees and the property is the Trust property. By contending so, the plaintiffs are seeking the reliefs which could be claimed under Section 92 of C.P.C. in the present suit. The requirement of filing a declaration suit holding that the suit properties are the properties of the Trust, prima facie do not appear to be necessary, as according to the plaintiffs, the property is Trust property and the grant itself was on behalf of the villagers and devotees in the name of defendant No.2 for the betterment of the temple and to meet the objects mentioned in the plaint, which may have to be decided in the suit through evidence to be recorded.

11. On looking to Section 92 of C.P.C., the suit can be filed with leave of the Court by the plaintiffs who are more than two

as required, to remove any trustee, appointing a new trustee, vesting any property in a trustee, directing a trustee who has been removed to deliver possession, directing accounts, declaring of the possession of trust property or of the interest therein shall be allocated to any particular object of the trust, authorizing the whole or any part of the trust property, settling a Scheme or granting such other relief as the nature of the case may require. Section 92(1)(h) permits the Court to grant such further or other relief which may require on the facts of a particular case. Suit is filed with the contention that suit properties are Trust properties and not the properties of the defendant No.2 in his personal capacity and he is managing the Trust and has sold the properties of the Trust to some persons and has also not credited the amount received as compensation amount for land acquisition to the Trust and seeking separate Scheme to be prepared for proper management of the Trust etc. These reliefs, prima facie come under under Section 92 of C.P.C. Though the defendant No.15 contends that the declaratory relief that the suit properties are Trust properties is to be decided in a separate suit, Section 92 of C.P.C. do not appears to bar the suit. Merely because in the Trust Deed, the property is not included, at this stage, it cannot be held that, the properties are not the Trust properties. On looking to the contentions, the evidence is required to decide as to whether the suit properties are the Trust properties and whether without separate declaration that the suit properties are Trust properties, suit is maintainable.

12. As regards the issue of limitation, as held in many decisions, the limitation point cannot be generally decided as preliminary issue as it is mixed question of fact and law and may require evidence. Therefore, both these additional issues cannot be tried as preliminary issue as prayed.

13. The learned counsel for defendant No.15 has argued that, regarding the suit properties, no relief could be given in the suit as the Sale Deeds were executed even before registering the Trust in 2003 and the suit could be only considered as a Scheme Suit. This aspect also requires evidence, as according to the plaintiffs, from the beginning from the stage of filing declaration, the suit property was treated as property of the Trust and the declaration itself was given by the defendant No.2 on behalf of the Trust and on behalf of villagers and devotees, regarding which, the Hon'ble High Court has also held in M.F.A. No.5021/2018 that these averments show the contention of the plaintiffs as creation of constructive Trust, which is finally to be decided in the suit through evidence.

14. The learned counsel for the defendant No.15 has referred to a decision of the Hon'ble High Court reported in **1998 SCC OnLine Karnataka 662, Rathamma Vs. B.A.Srinivasa Gupta and others**, in which Hon'ble High Court has considered various decisions, in which in one of the decision in **Bishwanath vs. Thakur Radha Ballabhji**, it is held, "**a suit by an idol for a declaration of its title to property and for possession of the same from the defendant, who is in possession**

thereof under a void alienation, is not one of the reliefs found in Section 92 of the Code of Civil Procedure and that the suit for declaration that a property belongs to a trust is held to fall outside the scope of Section 92 of the Code of Civil Procedure, as held by the Privy Council in the case of Abdur Rahim and by the Hon'ble Supreme Court in Pragdasji Guru Bhagwandasji vs. Ishwarlalbai Narsibhai". In the decision, the Hon'ble High Court has also held that ***"the relief claimed in the suit is one which does not come within the purview of clauses (a) to (h) and relief of permanent injunction has been claimed against third parties, who are not trustees. Therefore, mere allegation that the property is a public trust will not make Section 92 of the C.P.C. applicable."***

15. At this stage, the decision cannot be applied, as apart from the relief regarding the suit property, there are several reliefs connected to the Trust which aptly fall under Section 92 of C.P.C. and when the other reliefs are within the purview of Section 92 of C.P.C., even if the relief of declaration that the suit properties belong to a Trust cannot be covered under Section 92, the same can be brought under further relief, as this relief also would be in addition to the other reliefs which are covered by Section 92 of C.P.C. In a recent decision, Hon'ble Supreme Court, in **Civil Appeal No. 10946/2014, The Jamia Masjid Vs. Sri K.V.Rudrappa (since dead) by LRs. & others** dated **23.09.2021** has held in Para 51, "(ii), ***while deciding on a scheme for administration in a representative suit filed***

under Section 92 of the CPC the Court may, if the title is contested, have to decide if the property in respect of which the scheme for administration and management is sought belongs to the Trust.” Therefore, this finding of the Hon’ble Supreme Court makes it very clear that, the Court under Section 92 of C.P.C., may also have to decide the title of the property if it is contested in respect of which the scheme for administration and management is sought belongs to the Trust. This latest decision of the Hon’ble Supreme Court also prima facie show the maintainability of the suit. Anyhow, for the discussion made above, issue regarding maintainability can be decided only after recording evidence and cannot be decided as a preliminary issue. Accordingly, **point No.1** is answered in the **negative**.

16. **Point No.2:** For the discussions made on above Point, following order is passed:

ORDER

I.A.No.14 filed under Order 14 Rule 2 of C.P.C., by the defendant No.15 is dismissed.

(Dictated to the Stenographer Grade-1, transcribed by her on Computer and after corrections, signed and then pronounced by me in open Court on this the **13th day of August, 2024.**)

(Ravindra Hegde)

Prl. District and Sessions Judge,
Mysuru.

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