

1

C.R.P.(MD)No.808 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.808 of 2021 and
C.M.P.(MD)No.4374 of 2021

Rev.Fr.Savarimuthu (died)

1. Maria Selvam

2. Maria Christy

... Petitioners/ Respondents 2 & 3 /
Defendants 2 & 3

Vs.

1. V.S.Jeyapandi

2. P.Jerald Michael Raj

3. R.Jeyakumar

... Respondents / Petitioners /
Plaintiffs

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.14 of 2015 in unnumbered suit of 2015 on the file of the learned Principal District Judge, Thanjavur dated 31.03.2021.

For Petitioners : Mr.T.A.Ebenezer

For Respondents : Mr.G.Karnan



WEB COPY



ORDER

The respondents herein filed a suit under Order 7 Rule 1 read with Section 92 of CPC for settling a scheme for administration of the Madha Trust, Maruthanallur, Kumbakonam established under trust deed dated 22.12.1999. Since leave must be obtained for taking such a suit on file, they filed I.A.No.14 of 2015. Notice was ordered. After hearing both sides, the IA was allowed vide order dated 31.03.2021. Questioning the same, this Civil Revision Petition has been filed.

2.The Interlocutory Application could not have been allowed for two reasons. Firstly, Madha Trust had not been impleaded as one of the respondents. Secondly, except making a bare averment in the plaint as well as in the supporting affidavit that they are beneficiaries of the Trust, the applicants have not shown as to how they are interested in the Trust.

3.The aforesaid issues go to the root of the matter and the impugned order granting leave under Section 92 of CPC deserved to be straightaway set aside. When I was about to do so, the learned counsel



WEB COPY

for the respondents submitted that my hands are tied since the Civil Revision Petition itself is not maintainable. He contended that in a catena of case laws, the Madras High Court has repeatedly laid down that an order granting leave under Section 92 of CPC is merely an administrative order and not a judicial order and that therefore it is not amenable to challenge in exercise of jurisdiction either under Section 115 CPC or Article 227 of the Constitution of India.

4.It is true that in ***G.R.Govindarajulu & Sons Charities, Coimbatore & 2 others Vs. V.R.Sethurao and 12 Others (1998 (2) CTC 65)***, it was held that granting of leave, though being exercised by the Court, it is not by a Court of law, in the sense that the Court is discharging its administrative function and not a judicial or quasi judicial one. Section 151 of CPC also may not have any application. Hence a revision is not maintainable against the order granting leave.

5.The aforesaid judgment has been followed in the following cases:

“ (i) 2009 (1) CTC 416 (*Anikadavu Madamanai Lathekarar Kulam Sri Venkatesa Perumal Thirukovil*)



WEB COPY



Arakkattalai and Ors. Vs. K. Thandapani and Ors.)

(ii) 2009 SCC OnLine Mad 1821 (M.Azariah v. T.D. Sundaravarathan)

(iii) 2010 SCC OnLine Mad 5618 (A.G.Syed Mohideen Vs. Jayaram Educational Trust)

(iv) 2011 SCC OnLine Mad 52 (A.Vrishabados Vs. P.Jayachandran)

(v) 2013 (4) CTC 566 (Sri. Aurobindo Ashram Trust and Ors. Vs. S. Ramanathan and Ors.)

(vi) MANU/TN/0966/2017 (Ottakoothar Charitable Trust and Ors. Vs. V. Deivasigamani and Ors.).”

All the aforesaid orders are based on the ratio laid down by the Hon'ble Division Bench of the Madras High Court in ***R.Kannan Adityan Vs. B.S.Adityan ((1996) 2 LW 364)***.

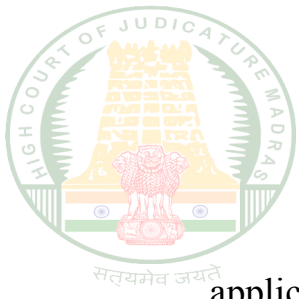
6.The decision rendered in ***R.Kannan Adityan Vs. B.S.Adityan ((1996) 2 LW 364)*** was questioned in Civil.Appeal.Nos.12915 - 20 of 1996 and decided on 16.04.2024 (***B.S.Adityan Vs. Ramachandran Adityan (2004) 9 SCC 720***). The appeals were dismissed. However, in the judgment it was observed that while some High Courts have taken the view that an order of granting permission under Section 92 of CPC is an



WEB COPY

administrative order, other Courts have taken the view that such an order is liable to be judicially reviewed. The Hon'ble Supreme Court did not endorse the ratio laid down in ***R.Kannan Adityan Vs. B.S.Adityan*** that the order granting leave is administrative in character. On the other hand, there is an observation in the judgment of Hon'ble Supreme Court that in the normal course, if an appeal is filed against an order granting permission to a party to file a suit under Section 92 of CPC, they would not normally interfere with the same.

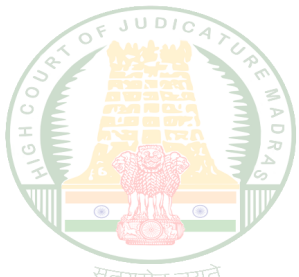
7.Swami Shivshankargiri Chella Swami Vs. Satya Gyan Niketan (2017) 4 SCC 771 appears to strike a different note altogether. In that case, the District Judge had granted leave under Section 92 of CPC. It was questioned by filing revision petition under Section 115 of CPC. The revision petition was allowed. The original applicants filed appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court noted that filing the plaint along with the leave application is a pre-requisite, and since the plaint was not annexed, it held that the trial Court erred in granting leave. The Hon'ble Supreme Court held that it was the statutory duty of the Court to examine whether the plaint is annexed with



WEB COPY

application under Section 92 and commented that the High Court also erred in neglecting this fact. The order of the High Court was not set aside while disposing of the civil appeal. The Hon'ble Supreme Court was cognizant of the distinction between an administrative order and judicial order. Since it was satisfied in the facts and circumstances of the case that the allegations made by the appellants deserved to be determined by way of evidence in a special suit under Section 92, for the ends of complete justice, the appellants were granted liberty to move appropriate application in accordance with law. It directed that the civil Courts having jurisdiction to entertain any suit are expected to carefully examine an application filed under Section 92 of CPC. A careful study of this decision leads me to the irresistible conclusion that the Supreme Court impliedly endorsed the maintainability of Civil Revision Petition against an order granting leave under Section 92 of CPC. This is evident from the fact that the order of the High Court setting aside the order granting leave was not interfered with.

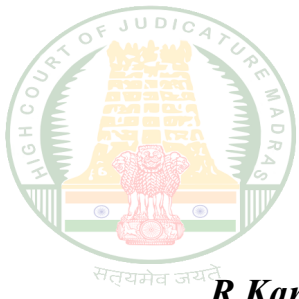
8. At least three other Hon'ble High Courts have taken a view contrary to ***G.R.Govindrajulu*** case. The Kerala High Court in ***2012 (2)***



सत्यमेव जयते
WEB COPY

KHC 502 (Church of South India Vs. John), it was held that “*to say that the order allowing or declining leave under Section 92 of the Code is an administrative order, which is not amenable to judicial review is per se wrong*”. When leave is granted, though such leave obtained is not final and it is still open to challenge in the suit, the substantive rights of the parties are being affected if not of the petitioners who seek such leave, but, that of the adversary, which is called upon to face the litigation, and, there is in fact an order deciding a case by the court which is amenable to further challenge by way of revision or under Article 227 of the Constitution of India, as the case may be. It observed that the grant of such leave under Section 92 CPC mechanically and solely based on the allegations in the plaint without having any enquiry as to the real object and purpose of filing the suit would have the consequence of ripping open the insulation and protection given to the public trust from being vexed and harassed by frivolous and vexatious suits.

9.The Karnataka High Court in ***Srimad Ujjaini Saddharma Vs. Sri S S Patil (C.R.P.No.400 of 2021)*** expressly dissented from ***G.R.Govindarajulu***. It noted that the Division Bench decision in

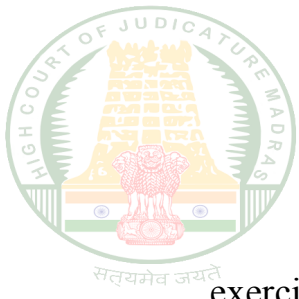


WEB COPY

R.Kannan Adityan Vs. B.S.Adityan was appealed to the Supreme Court and it concluded that if the judgment of the Hon'ble Supreme Court is read, it can be seen that the Supreme Court did not lay down any ratio that an order on an application under Section 92 of CPC is administrative in nature. The Hon'ble Karnataka High Court then took note of the decision rendered in **(2006) 7 SCC 452 (Vidyodaya Trust Vs Mohan Prasad R & Others)** and held that though in the aforesaid decision of the Hon'ble Supreme Court the distinction between administrative order and judicial order was not considered, it was held that revision is maintainable under Section 115 CPC.

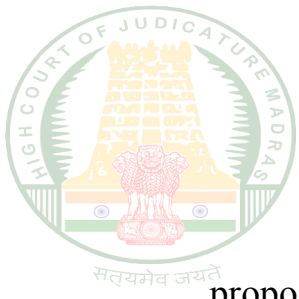
10.The Hon'ble Orissa High Court in **2023 (II) ILR-CUT 497 (Kalinga Institute of Mining Engineering and Technology Trust (KIMET), Chhendipada, Angul and Ors. Vs. Bipin Bihari Behera and Ors.)** had taken the view that an order passed under Section 92(1) of CPC is a judicial order.

11.The 7 Judges Bench of the Hon'ble Supreme Court in **SBP & Co Vs Patel Engineering Limited (2005) 8 SCC 618** held that the power



WEB COPY

exercised by the Hon'ble Chief Justice of the High Court or the Hon'ble Chief Justice of India under Section 11(6) of the Arbitration and Conciliation Act, 1996 appointing an arbitrator is a judicial power and not an administrative power. The majority Judges approvingly cited the earlier decision reported in *AIR 1965 SC 507 (Shankarlal Aggarwal and Others Vs Shankar Lal Poddar & Others)* to distinguish between an administrative and judicial order. An administrative order would be one which is directed to the regulation or supervision of matters as distinguished from an order which decides the rights of parties or confers or refuses to confer rights to property which are the subject of adjudication before the Court. It was categorically held that in the case of an administrative order, the discretion would involve purely subjective consideration. If the discretion has to be exercised based on objective considerations, it would be a judicial decision. The fact that the power is wielded by a Court and that there is a lis involved are also relevant considerations though not decisive. Applying the aforesaid tests, the Hon'ble Supreme Court held that the power exercised under Section 11(6) of the Arbitration and Conciliation Act, 1996 is judicial and not administrative. Though this decision has been statutorily superseded, the



WEB COPY

propositions laid down therein still hold good vide (*N.N.Global Mercantile (P) Ltd Vs. Indo Unique Flame Limited & Others*) (2023) 7 SCC 1.

12. Adopting the same approach, one can easily conclude that the power under Section 92 of CPC is judicial and not administrative. Firstly, the power is wielded by the civil Court. Obviously, there is a lis involved. Secondly, the civil Court has to exercise its discretion on objective grounds as the matter involves the rights of parties. The Division Bench Judgment in *R.Kannan Adityan* was put to challenge before the Hon'ble Supreme Court. Leave was granted and judgment was pronounced in Civil Appeal. Applying the doctrine of merger, it may not be appropriate to rely on the ratio laid down in the Division Bench judgment when the Hon'ble Supreme Court did not approve the same. On the other hand, the decisions rendered in (2006) 7 SCC 452 (*Vidyodaya Trust Vs Mohan Prasad R & Others*) and (2017) 4 SCC 771 (*Swami Shivshankargiri Chella Swami Vs. Satya Gyan Niketan*) clearly indicate that revision petition against an order granting leave under Section 92 of CPC is maintainable.

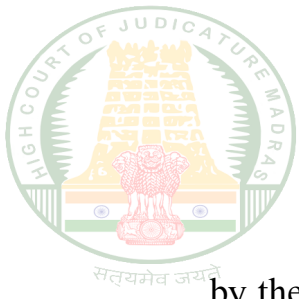


WEB COPY

13.The Hon'ble Justice K.Puttaswamy (of Aadhar fame) in ***Church of South India Trust Association Vs. Rev.D.I Ananda ((1980) SCC OnLine Kar 218)*** observed as follows:

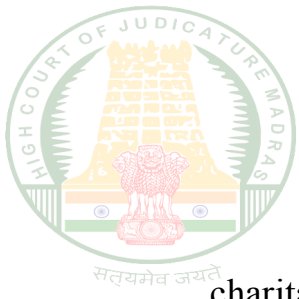
“13. An order refusing leave to two or more persons is appealable to the Court to which an appeal would lie from that Court (Vide Section 104(1)(ffa). But, an order granting leave, though not appealable, is revisable by this Court under Section 115 of the Code. An ultimate order made by the High Court in a proceeding under Section 92 of the Code, can be interfered by the Supreme Court either under Article 133 or under Article 136 of the Constitution as the case may be. An order that is subject to an appeal or revision, can never be said to be an administrative order. By any test, an order made under Section 92 of the Code is clearly a judicial order and the learned District Judge in holding to the contrary and dealing with the application on that basis, has committed an illegality or material irregularity affecting his jurisdiction.”

14.Unless it is held that an aggrieved party can question an order granting leave by filing revision petition, a fundamental error committed



WEB COPY

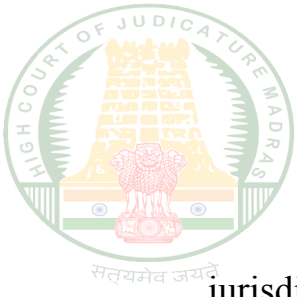
by the Court below cannot be corrected at the earliest stage. There is no merit in the contention that a revocation petition can be filed later. Most often leave petitions are disposed of after giving notice. In this case also the respondents were put on notice and leave was granted only after enquiry. I fail to understand as to how a petition for revoking leave can be filed later before the same Court. The Hon'ble Division Bench in the decision reported in *AIR 1988 MADRAS 1 (S.Guhan Vs Rukmini Devi Arundale)* categorically held that in a suit under Section 92 CPC the Trust is a necessary party and if it is not impleaded as a party to the proceeding, the suit deserves to be dismissed. In the present case, Madha Trust which is a necessary party had not been impleaded as a party. The Hon'ble Kerala High Court in the decision reported in *2012 (2) KHC 502 (Church of South India Vs. John)* held that the interest contemplated under Section 92 of the Code must be a real, substantive and existing interest in the particular Trust. Whether a person has got such an interest to maintain an action under Section 92 of the Code seeking leave for institution of such suit has to be determined on the basis of evidence and also with reference to the allegations raised in the draft plaint produced with the application of leave. The interest in the administration of the



WEB COPY

charitable Trust must be of their own and not of some others (*vide AIR 1924 PC 221(2)*). In the present case, the affidavit filed in support of I.A.No.14 of 2015 seeking leave is bald. The Court below had committed a basic error in overlooking these two aspects. The very purpose of conferring supervisory jurisdiction under Article 227 of the Constitution on the High Court is to correct the egregious errors committed by the Courts below so that they can be kept within their bounds. In this case, the learned trial Judge had observed that when the Trust in question is a public Trust, any person who is having an interest and anguish over the fair running of public Trust can institute a suit under Section 92 of CPC. This is a clear misconception and misapplication of the statutory provision. If such a grave error committed by the Court below cannot be corrected in exercise of revisional jurisdiction, then there is no purpose or meaning in conferring revisional and supervisory jurisdiction on the High Court.

15.For these reasons, I have respectfully taken a contra stand and hold that the order granting leave under Section 92 of CPC is a judicial order and not an administrative order and that it is amenable to revisional



WEB COPY

jurisdiction. I have not chosen to make a reference for constitution of a larger bench only for the reason that the view I have taken is supported by the approach of the Hon'ble Supreme Court. I also derive strength from the fact that when **G.R.Govindarajulu** was decided, the judgment in the appeal against **R.Kannan Adityan** had not been rendered. Secondly, the test laid down in **SBP & Co Vs Patel Engineering** had not been applied by any of my esteemed colleague Judges.

16.The order impugned in this Civil Revision Petition is set aside. This Civil Revision Petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

19.10.2024

Index : Yes/No

Internet : Yes/No

NCC : Yes/No

PMU/MGA



WEB COPY



15

C.R.P.(MD)No.808 of 2021

G.R.SWAMINATHAN,J.

PMU/MGA

To

The Principal District Judge,
Thanjavur.

C.R.P.(MD).No.808 of 2021 and
C.M.P.(MD)No.4374 of 2021

19.10.2024