IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL 2026

PRESENT

HON'BLE MR. JUSTICE D K SINGH

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

REGULAR FIRST APPEAL NO. 789 OF 2014 (DEC/INJ)

BETWEEN:

1. CHIDAMBARASHRAMA TRUST (R),
(A PUBLIC CHARITABLE TRUST)
HAVING ITS OFFICE AT
SRI. CHIDAMBARASHRAMA,
GUBBI TALUK-572 216.
TUMKUR DISTRICT,
REPRESENTED BY ITS MANAGING TRUSTEE,
SRI.SHIVACHIDAMBARA SHARMA,

2. SRI.SHIVACHIDAMBARA SHARMA
AGED 81 YEARS,
S/O SRI.MYLARAIAH,
MANAGING TRUSTEE,
R/O SRI.CHIDAMBARASHRAMA,
GUBBI, TUMKUR DISTRICT-572 216.

3. DR.S.S.SATCHIDANANDA
AGED 57 YEARS,
S/O SRI.SHIVACHIDAMBARA SHARMA,
R/O NO.32, 3RD CROSS, 6TH MAIN ROAD,
N.R.COLONY, BANGALORE-560 019.

…APPELLANTS

(BY SRI. V.B. SHIVA KUMAR, ADVOCATE)

AND:

1. SRI.R.S.SHARMA
AGED ABOUT 73 YEARS,
S/O DR.S.RAMA SASTRY,

R/O NO.690, "SRI" 6TH A CROSS,
2ND CROSS, KORAMANGALA,
BANGALORE-560 034.

2. SRI.GANESH RAO
AGED 81 YEARS,
S/O LATE SRI.S.GUNDAPPA,
R/O NO.399, 1ST FLOOR,
65TH CROSS, 5TH BLOCK,
RAJAJINAGAR, BANGALORE-560 010.

3. SRI.CHANDRASHEKAR.A.M.
AGED 61 YEARS,
S/O LATE SRI.MALLESHWARAM BHATTA,
R/O NO.792, 45TH MAIN, A BLOCK,
2ND STAGE, RAJAJINAGAR,
BANGALORE-560 010.

4. K.R.LAKSHMINARAYAN
S/O LATE K.S.RAMA RAO,
AGED ABOUT 84 YEARS,
RESIDING AT #1159,
7TH CROSS, 3RD MAIN,
OPP. AUDEN PUBLIC SCHOOL,
GIRINAGAR 2ND PHASE,
BENGALURU-560 085.

5. DR. N.K.S.RAJAN
S/O LATE N.S.KRISHNA IYENGAR,
AGED ABOUT 70 YEARS,
R/AT N4898 PLUMERIA BRIGADE MEADOWS,
SALU HUNASE VILLAGE, UDAYAPURA POST,
ANJANEYA TEMPLE, KANAKAPURA ROAD,
BENGALURU-560 082.

6. L.NAGESH ADIGA
S/O LAKSHMINARAYANA ADIGA,
AGED ABOUT 83 YEARS,
R/AT 31501, ADARSHANAGARA MAIN ROAD,
CHIKAMAGALURU, KARNATAKA-571 101.

7. GANAPATHI B.E.V.
S/O VENKATA GIRIYAPPA,
AGED ABOUT 69 YEARS,
RESIDING AT,
WARD NO.27, IKKERI ROAD,
BEHIND HP GAS GODOWN,
S.N.NAGAR, SAGAR, SHIMOGA-577 401.

8. SRI. K.N.PRABHAKAR
C/O LATE NADIG,
117, APPAJI,
3RD MAIN ROAD, 'A' BLOCK,
KARADI CHINNAPPA ROAD,
SHARAVATHI NAGARA,
SHIVAMOGGA-577 201.

...RESPONDENTS

(BY SRI. SREEDHAR.N.G., ADVOCATE)

THIS RFA FILED U/SEC.96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 28.02.2014, PASSED IN O.S.NO.09/2010 ON THE FILE OF THE I-ADDL. DISTRICT AND SESSIONS JUDGE, TUMKUR, DECREEING THE SUIT FOR DECLARATION AND MANDATORY INJUNCTION.

THIS APPEAL, HAVING BEEN RESERVED FOR JUDGMENT ON **18.12.2025**, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
&
HON'BLE MS. JUSTICE TARA VITASTA GANJU

CAV JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

Table of Contents

I. Preface:

1. This Regular First Appeal is directed against the Judgment and Decree dated 28.02.2014, passed in O.S.No.9/2010, by the I Additional District and Sessions Judge, Tumkur [hereinafter referred to as the 'Impugned Judgment'], whereby the suit instituted under Section 92 of the Code of Civil Procedure, 1908 [hereinafter referred to as the 'CPC'], came to be decreed, declaring the resolutions dated 23.12.2007 and 10.02.2008 [hereinafter referred to as the 'Impugned Resolution'] and the Amended Trust Deed dated 28.02.2008 [hereinafter referred to as the 'Amended Trust Deed'] as illegal and

void ab initio, and directing cancellation of the amended Trust Deed.

2. For the sake of convenience, the parties are referred to as per their status before the learned Trial Court.

3. Respondent Nos.1 to 3 appeared on caveat before this Court. Respondent Nos.4 to 8 are impleaded by the order of this Court dated 18.02.2025. Although all the respondents were served, the matter was only contested by respondent Nos.4 to 8. In view of the pendency of the matter for more than 11 years, this Court deemed it apposite to hear and decide the appeal finally.

II. Brief Facts:

4. The brief facts are that the respondents/plaintiffs instituted a suit under Section 92 of the CPC, in respect of Sri Chidambarashrama Trust and the Ashram established by the Sri Chidambarashrama Trust [hereinafter referred as the 'Trust']. Along with the plaint, I.A.No.1 was filed by the respondents/plaintiffs seeking leave to file a suit against the appellants/defendants under Section 92(a) of

the CPC. Objections were filed by the appellants/ defendants as well. By an order dated 16.07.2010, the learned Trial Court allowed this application and granted leave to the respondents/plaintiffs to file the suit. It was averred in the plaint that the said Trust was founded by Sri Chidambara Swamiji, who executed a Will dated 10.12.1954 and a codicil dated 13.06.1963, pursuant to which a registered Trust Deed came to be executed on 29.04.1990 [hereinafter referred to as 'Original Trust Deed'] for administration of the Ashram and its institutions [hereinafter referred to as 'Ashram'].

5. It was contended that the Original Trust Deed envisaged a democratic structure for administration of the Trust. According to the respondents/plaintiffs, appellant No.2/defendant No.2, who was functioning as Managing Trustee, in collusion with his son, the appellant No.3/defendant No.3, brought about an amendment to the Trust Deed on 28.02.2008 [hereinafter referred to as 'Amended Trust Deed'], on the basis of Impugned Resolutions said to have been passed in the General Body

Meetings dated 23.12.2007 and 10.02.2008, whereby appellant No.3/defendant No.3 was appointed as a Life Trustee of the Trust and extensive powers were vested in appellant No.2/defendant No.2.

6. The respondents/plaintiffs contended that the said amendment was contrary to the Original Trust Deed and the Will of the Founder and had the effect of concentrating powers in appellant Nos.2 and 3/defendant Nos.2 and 3, thereby defeating the basic structure of the Trust. Accordingly, the respondents/plaintiffs filed a suit in O.S.No.9/2010 seeking declaration that the amendment to the Original Trust Deed and the Impugned Resolutions were illegal and void and for consequential mandatory injunction for cancellation of the amendment.

7. The appellants/defendants, on the other hand, contended that the amendment was carried out pursuant to valid resolutions of the General Body and in accordance with the powers vested in appellant No.2/defendant No.2, and denied the allegations of illegality.

8. The learned Trial Court after examining the pleadings between parties, framed the following Issues:

"*Issues*

1. Whether the plaintiffs prove that they are the trustees of defendant No.1 trust?

2. Deleted

3. Deleted

4. Whether they further prove that defendant No.2 is appointed only as a member of the committee constituted by aforesaid Swamiji under a Will as alleged?

5. Whether they further prove that defendant No.2 also working as president of Ashrama without there being concurrence by the board of trustees?

6. Whether the plaintiffs further prove that amendment to trust deed is illegal as contended in para 8 of the plaint?

7. Whether they further prove that defendant No.2 has illegally appointed the defendant No.3 as life trustee under the amendment deed of trust dt.01-01-1998?

8. Whether the defendant No.2 proves that he is appointed as Adhyaksha and selected as managing trustee, as such he is competent person to hold two posts as contended in para 5 of the written statement?

9. Whether the plaintiffs further entitled to the declaration that amendment trust deed dt.28-02-2008 registered between defendant No.2 and 3 in the year 2006-07 is illegal, arbitrary and is void ab-initio and not binding on any one of the trustees?

10. Whether the plaintiffs entitled to declaration that resolution passed in general body meeting held on 23-12-2007 followed by another general body meeting held on 10-02-2008 empowering the defendant No.2 to execute and register amendment of trust deed is also arbitrary, illegal, unjust and is void ab-initio and is not binding on the trustees?

11. Whether the plaintiffs entitled to mandatory injunction to cancel the amendment of trust deed dt.28-02-2008?

12. What order or decree?

Additional Issues

1. Whether the defendants prove that the general body meetings were duly held on 27-12-2007 and on 10-02-2008?

2. Whether defendants further prove that the plaintiffs were present in the said two meetings held 10-02-2008?"

9. The respondents/plaintiffs produced respondent No.3/plaintiff No.3 as PW.1, their sole witness and filed Exhibits P1 to P11 including the Original Trust Deed (Exhibit P10(a)), Notices (Exhibit P2); and the Amendment to Trust Deed of 01.01.1998 (Exhibit P11(a)) and the amended Trust Deed dated 28.02.2008 (Exhibit P1). The appellants/defendants, however, did not lead any evidence before the learned Trial Court.

III. Impugned Judgment:

10. By the Impugned Judgment, the learned Trial Court decreed the suit filed by the respondents/plaintiffs and held that by the Amended Trust Deed dated 28.02.2008 brought about on the basis of Impugned Resolutions dated 23.12.2007 and 10.02.2008 were arbitrary, illegal and

void, and consequently decreed the suit by declaring the same as not binding on the Trust and directing cancellation of the Amended Trust Deed. This led to the filing of the present appeal before this Court by the appellants/ defendants, challenging the Impugned Judgment and decree.

11. This Court, by its order dated 08.04.2015 directed a stay on the operation of the Impugned Judgment and decree, subject to the conditions that the appellants/defendants shall carry on only the day-to-day affairs of the Trust and shall not alienate or encumber the Trust properties or take Policy Decisions affecting the Trust and its beneficiaries.

11.1 This matter was disposed of by this Court on 28.06.2024, recording a consensus between the parties. However thereafter, I.A.No.2/2024 was filed by the parties stating that the Order does not reflect the consensus arrived at. Thus, the order dated 28.06.2024 was recalled and the matter was directed to be heard afresh, by an order dated 19.07.2024.

IV. Contentions Of The Appellants/Defendants:

12. Learned counsel for the appellants/defendants contended that the respondents/plaintiffs had no locus standi to institute the suit under Section 92 of the CPC, inasmuch as they had failed to establish that they were Trustees or persons having a real and substantive interest in the Trust at the relevant point of time.

12.1 Learned counsel for the appellants/defendants contended that the suit instituted under Section 92 of the CPC, was not maintainable in the absence of any pleadings or proof of breach of trust or mismanagement. It was submitted that the respondents/plaintiffs have merely challenged the amendment to the Original Trust Deed without establishing any element of public injury or misconduct in administration of the Trust.

12.2 Learned counsel further averred that the Amended Trust Deed dated 28.02.2008, wherein an amendment to the Original Trust Deed dated 29.04.1990 was carried out pursuant to valid resolutions passed in the General Body Meetings dated 23.12.2007 and 10.02.2008, and the same was within the powers vested in appellant No.2/defendant No.2. It was contended that the learned Trial Court erred in holding that the amendment to the Original Trust Deed as illegal, without any cogent evidence and that the suit was decreed despite the absence of any independent proof to establish illegality or arbitrariness in the amendment.

12.3 Lastly, it was contended that the findings of the learned Trial Court are contrary to the material on record, since the respondents/plaintiffs have failed to establish that the provision cannot be used to settle internal private matters. Reliance in this behalf was placed on the judgments of the Supreme Court in the case of ***Vidyodaya Trust vs. Mohan Prasad R***[1] and ***Charan Singh and Others v. Darshan Singh***[2].

---

[1] (2008) 4 SCC 115
[2] (1975) 1 SCC 298

V. Contentions Of The Respondents/ Plaintiffs:

13. Learned Counsel appearing on behalf of respondents/ plaintiffs on the other hand has contended that Sri.Chidambara Swamiji, the Founder of the Ashram, had executed a Will prescribing the manner in which the Trust was to be administered, including the constitution of an Administrative Committee and the mode of selection of successors, and that the Original Trust Deed was executed to give effect to the said intent. It was submitted that the Impugned Resolutions dated 23.12.2007 and 10.02.2008, on the basis of which the Amended Trust Deed dated 28.02.2008 implementing changes to the Original Trust Deed, which were contrary to the Will of Sri Chidambara Swamiji.

13.1 It was contended that appellant No.2/defendant No.2, on the basis of the said resolutions, executed the amendment to the Trust Deed appointing his son appellant No.2/defendant No.3 as a Life Trustee and conferring extensive powers in the administration of the Trust, which is contrary to the Original Trust Deed and the scheme of administration established by the Settlor of the Trust.

13.2 In addition, it was contended that despite directions of the learned Trial Court, these Impugned resolutions and relevant documents were not produced by the appellants/ defendants, and therefore the learned Trial Court was justified in drawing an adverse inference in that regard.

13.3 Lastly, it was contended that the respondents/ plaintiffs, as Trustees, had instituted the suit to prevent concentration of powers and to ensure proper administration of the Trust, and therefore the learned Trial Court was justified in decreeing the suit and the suit instituted under Section 92 of the CPC was maintainable as the respondents/plaintiffs had sought to challenge acts affecting the administration of the Trust.

VI. Issues For Consideration:

14. The issues that arise for consideration before this Court are:

(i) Whether the suit under Section 92 CPC was maintainable and the plaintiffs had locus standi to file the suit?

(ii) Whether the Trial Court was justified in declaring the amendment to the Trust Deed and the resolutions as void?

VII. Nature And Scope Of Section 92 Of CPC :

15. At the outset, it is apposite to set out Section 92 of the CPC, which reads as follows:

> ***"92. Public charities. -*** *(1) In the case of any 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, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree:*
>
> *(a) removing any trustee;*
>
> *(b) appointing a new trustee;*
>
> *(c) vesting any property in a trustee;*
>
> *(cc) 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 to the person entitled to the possession of such property;*
>
> *d) directing accounts and inquiries;*

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863) or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypress in one or more of the following circumstances, namely:-

(a)where the original purposes of the trust, in whole or in part -

(i)have been, as far as may be, fulfilled; or

(ii)cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b)where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c)where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down-

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii)ceased to be, in law, charitable, or

(iv)ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust."

15.1 Section 92 of the CPC provides that where an allegation of breach of the conditions of the Trust, which is created for religious or charitable purpose, two or more persons having interest in the Trust and after having obtained the leave of the Court may institute a suit for obtaining a decree for appointing, removing, vesting any property or any other directions for accounts or directions for accounts and enquiries *qua* the Trust. Sub section (2) provides that no suit may be filed claiming the relief set out in sub-section (1) except in conformity with sub-section (1). Sub-section (3) of Section 92 of the CPC provides the powers of the Court *qua* a Trust; it states that it may alter the original purpose of a Trust in certain circumstances which have been enumerated there under.

16. The Supreme Court in the case of ***Ashok Kumar Gupta v. Sitalaxmi Sahuwala Medical Trust***[3], has, while explaining the applicability of this provision has held that this provision envisages two types of suits, the first alleging breach of the terms of the Trust and secondly, where a direction of the Court is requisite for administration of the Trust. It further sets out that the Court must be satisfied of three (3) pre-requisite conditions:

(a) The Trust must have been created for a public or religious purpose;

(b) There is a breach in the Trust requiring direction of the Court; and

(c) The relief claimed is enumerated in sub-section (1) of the provision.

[3] (2020) 4 SCC 321

16.1 The relevant extract of the ***Ashok Kumar Gupta***'s case is set out below:

> *"10. While considering the scope of Section 92(1), as it existed then, a Constitution Bench of this Court observed in Madappa v. M.N. Mahanthadevaru [Madappa v. M.N.Mahantha devaru, (1966) 2 SCR 151 : AIR 1966 SC 878], as under : (AIR p. 881, para 10)*
>
> > *"10. … Section 92(1) provides for two classes of cases, namely, **(i) where there is a breach of trust in a trust created for public purposes of a charitable or religious nature, and (ii) where the direction of the court is deemed necessary for the administration of any such trust.** The main purpose of Section 92(1) is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that section can only be filed either by the Advocate General, or two or more persons having an interest in the trust with the consent in writing of the Advocate General. **The object clearly is that before the Advocate General files a suit or gives his consent for filing a suit under Section 92, he would satisfy himself that there is a prima facie case either of breach of trust or of the necessity for obtaining directions of the Court.** The reliefs to be sought in a suit under Section 92(1) are indicated in that section and include removal of any trustee, appointment of a new trustee, vesting of any property in a trustee, directing a removed trustee or person who has ceased to be a trustee to deliver possession of trust property in his possession to the person entitled to the possession of such property, directing accounts and enquiries, declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust, authorisation of the whole or any part of the trust property to be let, sold, mortgaged or exchanged or settlement*

of a scheme. ***The nature of these reliefs will show that a suit under Section 92 may be filed when there is a breach of trust or when the administration of the trust generally requires improvement."***

xxx xxx xxx

12. ***Three conditions are, therefore, required to be satisfied in order to invoke Section 92 of the Code and*** *to maintain an action under the said section, namely, that:*

> *(i)* ***the Trust in question is created for public purposes of a charitable or religious nature;***
>
> *(ii)* ***there is a breach of trust or a direction of court is necessary in the administration of such a Trust****; and*
>
> *(iii)* ***the relief claimed is one or other of the reliefs as enumerated in the said section.***

Consequently, if any of these three conditions is not satisfied, the matter would be outside the scope of said Section 92."

[Emphasis Supplied]

17. Thus, a suit under Section 92 of the CPC is instituted for a vindication of public rights in respect of a Public Charitable or Religious Trust. The maintainability of such a suit is contingent upon the existence of foundational requirements, namely, an allegation of breach of trust or the necessity for directions of the Court in the administration of the trust, and the institution of the suit is

in a representative capacity for protection of public interest.

VIII. Maintainability under Section 92 Of the CPC :

18. As stated above, the respondents/plaintiffs filed I.A.No.1 along with the plaint seeking leave of the learned Trial Court to grant permission to institute the suit under Section 92 of the CPC. The respondents/plaintiffs averred that the original scheme of the Trust as contemplated under the Original Trust Deed dated 29.04.1990, as amended on 01.01.1998, could not be restored unless the relief as sought for is granted. It was further stated that the reliefs are as envisaged in clause (a), (g) and (h) of sub-section (1) to Section 92 of the CPC.

18.1 The appellants/defendants filed objections to the application contending that the respondents/plaintiffs are not Trustees to the Trust and denying that the conduct of the appellants/defendants is in derogation with the objectives of the Trust. It was further stated in the objections that the respondents/plaintiffs have filed a suit with an ulterior motive intending to stall the day-to-day activities of the Trust.

19. The learned Trial Court by its order dated 16.07.2010, found that the appellants/defendants admitted to there being a Trust and that there were serious allegations which would require examination by the Court. Hence, I.A.No.1 was allowed and leave was granted to the respondents/plaintiffs under Section 92 of the CPC in the following terms:

> *"This is a petition filed by the petitioners u/sec.92(1) of CPC for seeking permission to file the suit.*
>
> *It is contended that one Sri. Chidambara Swamy now deceased during his lifetime has led substantial part of his life as that of an ascetic and he established a center for religious and spiritual enlightenment, to impart general education and to reinforce social service in the name of " Chidambara Ashrama" on 22-10-1939 at Gubbi, Tumkur District and the* ***said Sri. Chidambara Swamy died on 01-08-1966*** *and Chidambara Swamy has left a Will dated 10-12-1954 followed by a Codicil dated 13-6-1963 which are registered documents to constitute a Trust.* ***Accordingly, during the year 1990 a deed of trust came into existence and registered amongst the trustees including defendant no.1 and therefore it is contended*** *that plaintiffs are the trustees to the said trust and defendant no.1 is the trustee and* ***defendant No.2 was appointed as one of the member of the committee constituted*** *by the aforesaid Swamiji……*
>
> *xxx xxx xxx*

It is alleged by the plaintiffs that the defendant No.2 is not Uttaradikari or Successor of the said Swamiji and ***therefore it is contended that as per the earlier trust deed defendant No.2 who is one of the member of the committee has no right to appoint defendant no.3 as a life trustee by amending original trust deed and also*** *they have sought declaration that two general body meetings called by defendant no.2 to amend the* ***earlier trust deed are also declared to be illegal. So there is serious allegation against defendant no.2 that whether he is Uttaradikari of the said trust or only he is one of the member of the said trust.*** *So when the serious allegations involved in respect of amendment or business of the trust certainly this is a fit case to grant leave of the court to file a suit.* ***It is true that the defendant no.2 has contended that he being Uttaradikar or Successor of Swamji has every right to appoint defendant no.3 as life trustee to the trust. But still we have to consider the rights of defendant no.2 for amending the trust deed for appointing defendant no.3 who is his son as life trustee. But all these rival claims to be determined only the suit and therefore this is a fit case to grant permission to file a suit.*** *Hence, in the result, I proceed to past the following:*

ORDER

The claim of the petitioners u/sec. 92(1) CPC is hereby allowed.

Permission is granted to file a suit against the defendants and accordingly register the suit and put up by 20.07.2010."

[Emphasis Supplied]

19.1 The learned Trial Court thus granted leave to the respondents/plaintiffs to institute the plaint to consider the rival claims of the parties. There is however no finding *qua* the satisfaction of the ingredients of Section 92 of the CPC.

This order was however not challenged by the appellants/defendants.

IX. Analysis & Findings:

20. In order to better appreciate the contentions of the parties it is requisite to examine the pleadings and evidence placed on record by the parties. The plaint reflects that the defendants nos. 2 and 3 have assumed unilateral powers as Life Trustees and have also usurped all powers and financial control of the Trust. It is contended that according to the Original Trust Deed, as amended in 1998, the Life Trustees of the Trust were only two in number viz., defendant No.2 (1) Sri. Sivachidam bara Sharma and (2) Sri. T.S. Sharma Rao and that the post of Life Trustees was not to be a hereditary post and they did not have any power to appoint any persons to a Trust either.

20.1 It is further stated in the plaint that any amendment to the Original Trust Deed is to be carried out by a resolution passed in a meeting of the Board of Trustees, with $3/4^{th}$ majority of the Trustees present in the meeting. The contention of the respondents/plaintiffs is thus that the amendments have been carried out on 28.02.2008, without following the provisions as set out in the Original Trust Deed as amended by the Amendment Deed of 1998. It is thus contended in the plaint that as a consequence of these amendments, the Trust has lost its significance and sanctity of a Public Charitable Trust and thereby, the basic structure or the scheme of the Original Trust has been defeated. The relevant extract of the plaint dated 11.06.2009 as filed by the respondents/plaintiffs before the learned Trial Court is set out below:

> *"3.* ***INTRODUCTION OF THE PLAINTIFFS****: -* ***The plaintiffs are the trustees of the defendant No.1 trust-and they are*** *aggrieved by the conduct of the defendants which is in derogation of the sacred objectives with which the trust has evolved.*
>
> *xxx xxx xxx*
>
> *7.* ***INTRODUCTION OF DEFENDANT No. 2****: The defendant No.2 was also called as Shivanna and was appointed as one of the members of the committee constituted by the aforesaid Swamiji Sri.* ***Chidambaraswamiji under the aforesaid Will and the said defendant No. 2 was not appointed as 'uttaradhikari' or as successor to the said Swamiji. After the demise of the Swamiji, the defendant No.2 was selected as President of the Committee. The said Defendant No. 2 is one of the six life trustees, who are appointed*** *by the Late Swamiji Sri. Chidambara Swamiji. After the registration of Trust Deed dated 29-4-*

1990, the defendant No. 2 was selected as Managing Trustee. The said defendant is also working as the president of the Ashram without there being concurrence by the Board of Trustees for the same. Thus the defendant No. 2 is performing dual obligations one as president and another as Managing trustee.

*8. **INTRODUCTION OF DEFENDANT No. 3**: **This defendant is the son of Defendant No. 2 who has been illegally appointed as life trustee, under the amended deed of trust dated 01-01-1998.** This defendant has actively connived with defendant No.2, to carry out an illegal amendment to the Original trust deed, so as to take over the entire management and administration of the Trust for himself keeping aloof all other trustees.*

xxx xxx xxx

*10. According to the Trust Deed, which stands amended as **1.1.1998, the life trustees of the trust are only two in numbers, namely the defendant No.2 herein and one Sri. TS. Shamarao.** These Life Trustees do not have any manner of right whatsoever to appoint one more life trustee. According to the said Trust Deed, after the tenure of life trustees, the appointment of any other person as trustee shall hold good only for a period of five years. The **Post of the life trustee is not a hereditary post and the appointment of the vacancy to the same is regulated by the trust deed, according to which, the appointment of any persons to such vacancy can hold office for a period of five years like other trustees.***

*11. Likewise, if any amendment to the Trust Deed is to be carried out, there has to be a resolution passed in a meeting of **a board of trustees with 3/4th majority of the trustees present in the meeting and also it is provided in the trust deed that any amendment that has to be carried out should not be repugnant to the provisions of Section 2 (15), Section 11 to 13 and Section 80 (g) of the Income Tax Act, 1951[sic: 1961].** Further it is also mandatory to obtain prior approval of income tax department to carry out any amendment to the Trust Deed.*

12. It is further evident ***from the preamble of the Trust Deed that no amendment can be carried out so as to defeat the basic structure of the said Trust, that belong the last Will of the Late Swamiji, Sri. Chidambara Swamy****. It is further evident from the Trust Deed at clause No.6 that the post of the President and of the Managing Trustee are two independent posts carrying separate qualifications, powers and functions. Whereas the President is to be selected from the Board of Trustees, the Managing Trustee on the other hand is to be appointed by the Board of Trustees.*

13. While this being so, the defendant No. 2 & 3 having actively connived to carry out an amendment vide amendment ***of Trust Deed dated 28.2.2008 whereunder the defendant No.2 had assumed unilateral powers so as to appoint the defendant No.3 as life trustee contemplating him to be the next Managing Trustee,*** *thereby giving unilateral powers to a life Trustee and to the Managing Trustee, totally in derogation of the basic structure of the original Trust Deed dated 29.4.1990 and also repugnant to the prevailing rules which regulate the administration of the trust.* ***This illegal amendment clearly manifest the malafide intention of defendant No.2 where under he has intended to keep the post of Managing Trustee as a hereditary post and to play a despotic role in the administration of the Trust.***

14. ***As an immediate and obvious consequence of this illegal amendment, the powers and functions of the Board of Trustees have totally lost significance and that the sanctity of a Public Charitable Trust is totally absent****. By the vice of this illegal amendment, the trust has assumed the character of a private trust in the hands of a private individual acting at his whims and fancies.* ***Therefore, the basic structure or the scheme and the scheme contemplated thereof in the original trust deed is at stake and leaves a reasonable apprehension of mismanagement of not only the trust but also of the trust funds, for personal gains of the defendant Nos. 2 and 3.***

> *15. The defendants so as to carry out the aforesaid illegal amendment are alleged to have conducted a **general body meeting on 23.12.2007 followed by another general body meeting on 10.2.2008. These defendants are alleged to have passed self-serving resolutions for carrying out the said illegal amendment.”***
>
> [Emphasis Supplied]

20.2 The averments as set out in the plaint would indicate that the grievance of the respondents/plaintiffs is essentially directed against the amendment to the Trust Deed dated 28.02.2008 and the resolutions dated 23.12.2007 and 10.02.2008 and the reliefs sought for before the learned Trial Court were to set aside and cancel the amendment deed of 2008, as well as declarations to declare the Amendment Deed and the resolutions of the General Body Meeting as null and void.

21. The suit was contested by appellant No.2/defendant No.2 Sri.Sivachidambara on his behalf and on behalf of the remaining defendants. It was stated in the Written Statement filed that the appellant No.2/defendant No.2 acted upon the dictum of the General Body as reflected in its meetings held on 23.12.2007 and 10.02.2008. It was further stated that all the plaintiffs were present in the

meeting and had signed the resolution. The appellants/defendants contended that since only one Life Trustee was alive, the Ashram has made arrangements for appointing a new Life Trustee and the appellant No.2/defendant No.2 was empowered by the General Body of the Trust, to appoint the next Life Trustee to carry out the amendments. The relevant extract of the Written Statement dated 01.09.2010, is below:

> *"7. With regards to averments made in the para 9 to 15 of the plaint, it is specifically stated that the said averments are all conveniently manipulated to suit the claim of the plaintiffs and are all factually wrong and false.* ***Further it is stated that the defendant No.2 acted only upon the dictum of the General Body Meetings held on 23:12:2007 and 10.02.2008. It is brought to the kind notice of this Hon'ble Court that the General body was conducted on 23.12.2007 and it was resolved by the General Body …***
>
> *xxx xxx xxx*
>
> ***Further it is also to be noted that all the plaintiffs were present in the said meeting and have signed the resolution. Accordingly, the General body has empowered the. Further on 10.02.2008 the General Body was convened and in the said meeting it was recorded that*** *…*
>
> *Thus it is very clear that* ***the supreme body of the Ashram has made the arrangements of appointing a new life trustee and empowered the 1st defendant to*** *carry out the amendments to the Trust Deed and in the very first of the two meetings the plaintiffs were also present. Hence questioning the authority of the General Body, in guise, as has been done in this case cannot be considered and hence the*

suit fails to be considered and is malafide one with ulterior motive only. Moreover the action of the 2nd defendant is in accordance with the directions of the general body meeting and the resolutions passed and the action taken squarely comes well within the doctrine of Cypress. Hence the plaintiffs have approached this Hon'ble Court with unclean hands suppressing the material facts with false allegations."

[Emphasis Supplied]

21.1 From an examination of the translated copy of the Written Statement, it can be seen that the essence of the case of the appellants/defendants is that as per the list of Life Trustees mentioned in the Will executed by Sri Chidambara Swamiji, except the sole life trustee, appellant No.2/defendant No.2, Sri Sivachidambara Sharma, the other life trustees are not alive and the said Sri Shiva Chidambara Sharma was entrusted with the responsibility of selecting next life trustee for Chidambarashram by the Board. It further reflects one Sri.Suchindra Prasad, an old student and well-wisher requested that Sri. Shiva Chidambara Sharma to appoint new Life Trustee based on talent and in the interest of administration and requested the elders to participate. A proposal was thereafter made to appoint Dr.S.S.Satchidananda as the next Life Trustee.

The old students and members expressed their happiness for selection of Dr.S.S.Satchidananda as next Life Trustee. It was also held that meeting should approve the grant of administrative authority to Sri. Shiva Chidambara Sharma, the sole Life Trustee and current President of the Ashram and allow for amendments and modifications in the Trust Deed of the ashram. The current Trustee Committee of Ashram needs to cooperate with the administrative decisions of the ashram by providing relevant suggestions as usual to compliment the administration of the ashram. The assembly unanimously approved these decisions.

21.2 Thus, it is the contention of the appellants/ defendants that the amendments were carried out in accordance with the wishes of the General Body of the Trust. However no evidence was produced by the appellants/defendants before the learned Trial Court.

(a) Locus Standi and Representative Capacity of Respondents/Plaintiffs:

22. One of the principal contentions that has been raised by the learned counsel for the appellants/defendants is

that the respondents/plaintiffs failed to establish that they were Trustees or persons having a substantial interest in the Trust Property and that no element of public injury or misconduct of the administration of the Trust was established. Learned counsel for the appellants/defendants has relied on the judgment of the Supreme Court in the ***Vidhodaya Trust*** case and the ***Charan Singh's*** case to submit that the provisions of Section 92 of the CPC, can only be utilized as is envisaged under the Section and cannot be used to settle internal management matters of a Trust. In addition, and as set out in the Written Statement, it was averred that defendant No.2 is the only Life Trustee who is presently alive.

22.1 It is further contended that the pleadings do not disclose any specific or substantive allegation of breach of trust, diversion or misuse of trust property, or mismanagement affecting the public at large. The challenge is primarily to the manner in which the affairs of the Trust have been administered, which, in the view of this Court, pertains to internal management of the Trust.

23. The respondents/plaintiffs on the other hand have contended that the entire nature of the Trust was changed and that the amendment is completely contrary to the Will and Codicil of the Settlor of the Trust viz., Sri.Chidambara Swamy.

24. Given the challenge made by the appellants/ defendants, this Court also examined the applicability of Section 92 of the CPC. It is not disputed by either party that the Trust is a religious Trust and thus the first ingredient of this provision stands satisfied. The second and third ingredient of this provision is that there may be an allegation of a breach requiring directions from the Court under sub section (1) of Section 92 of the CPC. It is the contention of the respondents/plaintiffs in the plaint that basic structure and the entire reason for the creation of the Trust has been changed by the amendment. Thus, what is required to be seen is whether the respondents/plaintiffs have been able to show that there is

a breach of any express or constructive trust as is envisaged in the provision.

(b) Scheme of The Original Trust and Founder's Intent :

25. The material on record discloses that the founder, Sri Chidambara Swamiji, had executed a Will dated 10.12.1954 and a codicil dated 13.06.1963, laying down the manner in which the affairs of the Ashram and its institutions were to be administered. A perusal of the said Will indicates that the administration of the Ashram was envisaged through a committee-based structure, and that the management of the Trust was to be carried on in accordance with the institutional framework so prescribed in the form of a General Body of the Trust. The Will thus reflects a structured scheme of administration rather than vesting absolute control in any individual.

26. For an examination of the allegations of breach it is apposite to examine the Original Trust Deed. The Trust was formed almost 25 years after the death of the Swamiji. The Original Trust Deed (Exhibit P10) is dated

29.04.1990 references that it is established by eight persons including appellant/defendant No.2 and provides that the Swamiji established a Centre for religious and spiritual enlightenment, imparting general education and social service by the name of Chidambara Ashram at Gubbi on 22.10.1939 and ran the same until his demise in the year 1966. The Ashram was teaching Sanskrit language to High School students and also provided general education for poor and orphaned students. The printing press was also established. Thereafter, a Registered Society was formed, which gave financial support to the Ashram. The recitals of the Trust Deed are detailed and set out the reasons for the formation of the Trust. The nature of the Trust is stated to be a public charitable Trust and the objects of the Trust as set out for imparting Sanskrit as education and to promote the Sanatana Dharama and various other objects for the welfare and benefit of the poor, aged, sick, physically handicapped or infirm persons.

26.1 The Original Trust Deed provides that the President of the Trust shall be a Sanyasi or Brahmachari who is separate from his spouse and well versed with his scriptures. Further, it sets out that the Managing Trustee would be subject to the Superintendent and direction of the Board of Trustees and shall discharge functions as are delegated to him by the Board. The Trustees themselves comprise of the Board of Trustees and they have the full power to administer the Trust and do all things necessary for the objects of the Trust. It further provides for the irrevocability of the Trust and sets out that if the Trust should fail or if it is resolved, the Board of Trustees will transfer the properties and institutions to any other Public Trust having similar objects. The power to frame Rules and Guidelines for the management of trust is also set out therein. The relevant extract of the Original Trust Deed is set out below:

> *"This Deed of Trust executed on the 29th day of April One Thousand and* ***Nine Hundred Ninety (29.4.1990).***
>
> *AND*

BY: The patrons, Donors and Life members of Chidambara Ashrama, Gubbi, an Institution found by the Late Revered Sri. Chidambaraswamy represented herein by:

1. *Sri. Shivachidambara Sharma*
2. *Sri. D. Shivadas*
3. *Sri. T.S. Shama Rao*
4. *Sri. C. Chandrasekharaiah*
5. *Sri. Venkataramaiah*
6. *Sri. D.S. Subba Rao*
7. *Sri. T.V. Raghava*
8. *Sri. S. Ganesh Rao.*

Witnesseth as follows:-

I. Whereas Late Sri Chidambara Swamy lived the life of an ascetic in the last many years of his life and established a Centre for Religious and Spiritual enlightenment imparting general education and social service, by the ***<u>name of "Chidambara Ashrama" at Gubbi on 22.10.1939, and he ran the same until his demise on 1.8.1966</u>****;*

xxx xxx xxx

<u>IV. And Whereas Sri Chidambara Swamy left a WILL dated 10.12.54 followed by a codicil dated 13.6.1963 through which he expressed a desire that the activities at the Ashrama which he had started and was carrying on should be continued in perpetuity through the medium of a Trust and for the said purpose he constituted a Board of Six trustees);</u>

V. Whereas out of the six trustees appointed by him two of them passed away during his life time and in their place he appointed two others and after his demise, two more trustees passed away and the Board of Trustees in office coopted four more trustees and accordingly the Trustee now in office are:-

1. *Sri. Shivachidambara Sharma*
2. *Sri. D. Shivadas*
3. *Sri. T.S. Shama Rao*
4. *Sri. C. Chandrasekharaiah*
5. *Sri. Venkataramaiah*
6. *Sri. D.S. Subba Rao*
7. *Sri. T.V. Raghava*
8. *Sri. S. Ganesh Rao*

xxx xxx xxx

of three, the first four were appointed by Late Chidambara swamy and the remaining four were subsequently coopted by the Board of Trustees.

xxx xxx xxx

1 B. Nature of the Trust:-

***This Trust shall be a public Charitable Trust.** All its properties funds and income therefrom shall be applied solely in India for the purposes of the Trust without any discrimination on grounds of sect of sex.*

xxx xxx xxx

***5. Whenever Vacancy amongst the Trustees arises, the: same may be filled by the remaining Trustees by nomination or co-option one from among benefactors. All office bearers shall also be chosen only from among the Trustees who are interested in the objects and activities of the Trust. a)** If any of the Trustee fail to attend the Trustees meeting continuously 3 times he shall be deemed to have resigned from the Board of Trustees.*

6. Duties of the Office Bearers:-

a) President:- The President and in his absence the Managing Trustees shall provide over at all meetings of the Board of Trustees and Committee thereof.

The President of the Trust shall be selected from the Board of Trustees having regard to the best interest of the Ashrama and such a person shall be a Sanyasi,** Brahmachari or Venaprastha who is totally separate from his spouse and who is well versed in scripts and Vedas. **The appointment of the President may be ratified by the benefactors.

*b) **Managing Trustees: Subject to the superintendence control and direction of the Board of Trustees, the Managing Trustees shall be incharge of the day-today administration of the Trust, its affairs and properties.** He shall be its Chief Executive and implement all decisions of the Board. Without prejudice to the above powers, the Managing Trustee shall have power to appoint dismiss, remove,* *suspend or take disciplinary action against all employees of the Trust.*

The Managing Trustee may also discharge such other duties and functions as are delegated to him by the Board of Trustees.

The Managing Trustee shall also have power to bring all actions on behalf of the Trust and defend any action brought against the Trust.

xxx xxx xxx

a) Treasurer: The Treasurer shall be responsible for maintaining the accounts of the Trust and other matters connected with the financial management if the properties and funds of the Trust.

b) Entrustment of other duties by the Board;

The office bearers may discharge such other functions as may be entrusted to them by the Board of Trustees from time to time.

xxx xxx xxx

10. Power of the Trustees:-

a) The Board of Trustees shall have full power and authority to administer the trust, its institutions, projects properties and funds and to do all acts, deeds, and things as are calculated to promote the objects for which the Trust is as [sic: established]. The Board of Trustees shall be entitled to act as if its number is reduced to two, for the purpose of raising the number of Board of Trustees to the minimum of eight.

b) Without prejudice to the generality of the foregoing, the board of trustees or its nominee shall have full power and authority for the purposes of the Trust.

> *i) to acquire properties by purchase, grant, gift, lease or otherwise and to hold and dispose of all properties immovable and movable.*

xxx xxx xxx

15. Framing of Rules and Bye Laws:

__The Board of Trustees may frame Rules and Bye-laws for the Management of the Trust, its properties, funds,__ *institutions, projects and scheme as also the proceedings of the Trustees and in [the] matter of raising funds for the Trust.* ***__All such Rules and Bye-laws may be amended or rescinded from time to time by the Board of Trustees by a resolution passed by not less than three-fourths of the Trustees present and voting at the meeting of the Board of Trustees called for that purpose__****, provided, however, that no Rules or Byelaws or amendment thereof shall be repugnant to the provisions of Sec.2 (15) Sections, 11 to 13 and S.80G of the Income Tax Act, 1961. Further no amendment shall be carried out without the prior approval of the commissioner of Income-tax.*

xxx xxx xxx

17. __Irrevocability and failure of the Trust:-__

The Trust hereby established is irrevocable. If for any reason, this trust shall fail or it is resolved to dissolve this Trust at any future time, the Board of Trustees may transfer the properties, institutions, and funds to any other public Trust, having similar objects and which enjoys recognition under S.80G of the Income Tax Act if a Resolution to that effect is passed by the Board of Trustees then in office unanimously or by not less than three-fourths majority and endorsed by the benefactors of the Chidambara Ashrama.

In witness whereof the parties above. named have — executed these presents in the presence of the witnesses attesting hereunder; (a)

Sd/-
TRUSTEES

4 a) __LIFE TRUSTEES AND OTHER TRUSTEES:__

Among the Present Trustees, ***__the First four who had been appointed as Trustees by the Late Sri Chidambara Swamy shall continue to hold office for Life or until they resign. As regards the other trustees, not less than 3 (three) persons shall retire once at the end of every five years__****. The retirement shall be by rotation. The persons to retire shall be those who have been longest in office since their last appointment. In the absence of agreement among the*

Trustees as to who would retire, than the same shall be decided by taking out lot.

<u>After the existing Life Trustees Seize to hold office those coming in their place shall be liable for retirement as other Trustees.</u> *A retiring Trustees shall be eligible for re-election.*

[Emphasis Supplied]

27. The respondents/plaintiffs have produced as Exhibit-P11, the Amended Trust Deed of 01.01.1998. The deed of amendment of 1998 sets out that clause 4(a) of the Original Trust Deed would stand amended as follows:

"IV. ACCORDINGLY these presents witnesseth that the DEED OF TRUST dated 29.4.1990 shall stand amended with immediate effect in the manner specified below.

Delete clause 4 (a) and in the place substitute the followings:

<u>4 (a) Sri Shiva Chidambara Ashrama [sic Sharma] and Sri. T.S. Shama Rao, shall be TRUSTEES for Life or until they resign.</u>

<u>All the Trustees other than Life Trustees shall cease to hold office upon the completion of FIVE YEARS from the date of their accepting the "TRUSTEESHIP".</u> *This shall be applicable to Trustees appointed before the DEED OF MANAGEMENT dated 1.1.1998 also.*

All Trustees appointed hereinafter shall hold office for a period of FIVE YEARS only from the date of their accepting the 'TRUSTEESHIP'".

[Emphasis Supplied]

27.1 Thus, the Amendment to the Trust Deed provided that the Life Trustees appellant No.2/defendant No.2 and

T.S.Sharma shall be Trustees for Life or until they resign and as regard the other Trustees, they shall retire once at the end of every five years. It also provides that two additional names of Life Trustees.

28. There is no dispute qua this amendment of 1998. However, and as can be seen from the plaint (which is extracted in paragraph No.20.1 above), the contentions of the respondents/plaintiffs are that the appellant No.2/defendant No.2 does not have any right to appoint any Life Trustee and that the appointment in the case of a vacancy is to be regulated by the Trustees. It further sets out that a resolution passed in the meeting of the Board of Trustees has to be passed by 3/4th majority of the Trustees present in the meeting and that the amendments cannot be such so as to defeat the basic structure of the Trust. Lastly, the plaint sets out that the appointment of appellant No.3/defendant No.3 by defendant no.2 is so that he could contemplate him to be the next Managing Trustee and that the post of the Managing Trustee has become hereditary.

29. The Original Trust Deed in its recitals does refer to the Will and codicil of the Swamiji and also that the activities in the Ashram would be carried out through a Board of Trustees. Clause 10 of the Original Trust Deed refers to the fact that the Board of Trustees shall have the power to administer the Trust and that the Board is entitled to act if the number of Trustees is reduced to 2 members and to raise it upto a minimum of 8 Trustees. Clause 5 of the Original Trust Deed references that a vacancy amongst the Trustees would be filled up by the remaining Trustees by nomination or co-option and the Office Bearers should be chosen from who are persons interested in the object and activities of the trust. Clause 15 of the Original Trust Deed provides that the Board of Trustees may frame Rules or By-laws for the management of the Trust and its properties and such Rules and By-laws may be amended or rescinded, from time to time by not less than 3/4th of the Trustees present and voting at a meeting called for the same purpose. There is however no provision in the Trust Deed for amendment of the Deed

itself. In addition, no Rules/Bye laws of the Trust have been produced before the Court.

30. The amendment of 1998 to the Trust Deed was only one paragraph and provides that the appellant No.2/defendant no.2 and Sri.T.S.Sharma shall be Trustees for life or until they resign and as regard other Trustees they shall retire once at the end of every five years.

31. Learned counsel for the appellants/defendants has placed reliance on the judgment of the Supreme Court in the ***Charan Singh*** case to contend that the Supreme Court has laid down that the maintainability of a suit under Section 92 of the CPC must be determined primarily on the basis of the averments contained in the plaint, and that the Court must examine the real nature and purpose of the suit. It has been held that the provisions of Section 92 of the CPC are attracted only where the suit is of a representative character instituted for vindication of public rights in respect of a public trust, and not where the suit is essentially directed towards enforcement of individual or

private rights. The Supreme Court has further emphasized that the Court must look beyond the form of the reliefs and consider the substance of the allegations to ascertain whether the suit truly falls within the scope of Section 92 of the CPC. The relevant extract of the ***Charan Singh*** case is set out below:

> *"6. **It is well-settled that a suit of the nature envisaged by Section 92(1) of the Code to obtain a decree for any one or more of the reliefs enumerated in Clauses (a) to (h) of the Code has to be filed by the Advocate-General or two or more persons having an interest in the Trust with the consent in writing of the Advocate-General. Sub-section (2) provides that save under certain circumstances**...no suit claiming any of the reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section."*
>
> ***Out of the 3 conditions which are necessary to be fulfilled for the application of Section 92, two are indisputably present in this case viz. (1) the suit relates to a Public Charitable or Religious Trust; (2) it is founded on an allegation of a breach of trust and the direction of the Court is required for administration of the trust. The debate and dispute between the parties centered round the requirement of the fulfilment of the third condition namely whether the reliefs claimed are those which are mentioned in Sub-section (1) of Section 92 of the Code. A suit may be instituted under Section 92(1) to obtain a decree-***
>
> *(a) removing any trustee;*
>
> *(b) appointing a new trustee;*
>
> *(c) vesting any property in a trustee;*

(cc) 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 to the person entitled to the possession of such property;

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

xxx xxx xxx

*8. **Lord Sinha delivering the judgment of the Judicial Committee of the Privy Council in Abdur Rahim and Ors. v. Syed Abu Mahomed Barkat Ali Shah and Ors rejected the argument that the words "such further or other relief as the nature of the case may require" occurring in Clause (h) must be taken, not in connection with the previous Clauses (a) to (g) but in connection with the nature of the suit.** The argument was that any relief other than (a) to (g) in the case of an alleged breach of an express or constructive trust as may be required in the circumstances of any particular case was covered by Clause (h) It was repelled on the ground that the words "further or other relief" must on general principles of construction be taken to mean relief of the same nature as Clause (a) to (g). It would be noticed that the word used after Clause (g) and before Clause (h) is "or". It may mean "and" in the context, or remain "or' in the disjunctive sense in a given case. **If any further relief is asked for in addition to any of the reliefs mentioned in Clauses (a) to (g) as the nature of the case may require, then the word "or" would mean "and". But if the relief for is other relief which is not by way of a consequential or additional reliefs in terms of Clause (a) to (g), then the word "or" will mean "or".** The other relief however, cannot be of a nature which is not akin to or of* *the same nature as any of the reliefs mentioned in Clauses (a) to (g). According to the plaintiffs' Q case one of the objects of the religious trust was the worship of Granth Sahib and its recital in congregations of the public. In the suit a decree declaring what portion of the trust property should be allocated to the said object could be asked for under Clause (e). The plaintiffs could also ask for the settling of a scheme under Clause (g) alleging mismanagement of the religious trust on the part of the trustees. In the settlement of the scheme could be included the worship and recital of Granth Sahib-the holy Granth. The plaintiffs in their plaint did not in terms ask for the one or the other. They, however, alleged acts of breach of trust, mismanagement, undue interference with the right of the public in the worship of Granth Sahib. They wanted a decree of the Court against the appellant to force him to carry out the objects of the trust and to perform his duties as a Trustee. Reading the plaint as a whole it is not a suit where the plaintiffs wanted a declaration of " their right in the religious institution in respect of the Granth Sahib. But it was a suit where they wanted enforcement of due performance of the duties of the trustee in relation to a particular object of the trust. It is well-settled that the maintainability of the suit under Section 92 of the Code depends upon the allegations in the plaint and does, not fall for decision with reference to the averments in the written statement.*

xxx xxx xxx

11. There were two parts of the said relief-one a declaration that the plaintiffs as Bhakats of the Satra were entitled to possess their own Basti and paddy lands and the other that they had a right to access to the use of the Satra for various religious purposes. Such a relief could not come under Clause (h) because it was mainly concerned with the establishment of the rights of the plaintiffs in the lands as well as in the religious institution. ***<u>In the plaint of the instant case the relief claimed is not primarily for the establishment of the right of the public to the religious institution. It recites the facts as to the right without mentioning any appreciable dispute concerning it, mainly alleges breach of duty on the part of the trustee and the plaintiffs seek the court's aid against the trustee for forcing him to discharge his obligations</u>***

> ***by due performance of his duties****. In our judgment therefore the Courts below were right in taking the view that the present suit was a suit for a decree under Section 92 of the Code and since it was not filed in conformity with the requirement of the Code and since it was not filed in conformity with the requirement of the said provision of law it was not maintainable. The contrary view taken by the Division Bench of the High Court in the Letters Patent Appeal is not correct."*
>
> [Emphasis Supplied]

31.1 This has further been clarified by the Supreme Court, in the case of ***Operation Asha v. Shelly Batra***[4]. It has been held that a suit under Section 92 of the CPC, is of a representative character and is instituted not for an assertion of private or individual rights, but for protection of public rights in respect of a public charitable or religious trust. It has been further held that the jurisdiction under Section 92 of the CPC is attracted only where there are specific allegations of breach of trust, mismanagement, or misuse of trust property affecting the public at large, and that disputes pertaining merely to internal administration or management of the trust would not fall within its ambit.

[4] (2026) 1 SCC 569

The relevant extract of the ***Operation Asha*** case is set out below:

> *"35. A suit under this provision can be termed as a "representative suit of a special nature" since the object behind the enactment of this provision is the protection of public rights in the public trust.* ***<u>Therefore, the parties filing a suit by invoking this section are considered to be representatives of the public.</u>***
>
> *36. A three-Judge Bench of this Court in Ahmad Adam Sait v. M.E. Makhri [Ahmad Adam Sait v. M.E. Makhri, 1963 SCC OnLine SC 71] had elaborated on how a suit under Section 92 CPC is a "representative suit" while deciding whether the second suit would be barred by constructive res judicata.* ***<u>It was stated that when a suit is brought under Section 92, by two or more persons interested in the trust, they could be said to have taken upon themselves the responsibility of representing all the beneficiaries in the trust and though, all the said beneficiaries may not be expressly impleaded in the suit, the action is essentially instituted on their behalf and the relief claimed is representative in character.</u>*** *While stating so, however, it was clarified that the plaintiffs bringing the second suit must have the "same interest" as that of the plaintiffs or defendants of the earlier representative suit, for the principle of res judicata to apply. In other words, it must be examined if the interest of the plaintiffs in the second suit was represented in the earlier representative suit.*
>
> xxx xxx xxx
>
> *42.* ***<u>Thus, the grant of leave under Section 92 CPC serves as a procedural safeguard, ensuring that public charitable trusts are protected from malafide suits that may have the consequence of impeding their operations</u>****. At this stage, however, the court neither adjudicates upon the merits of the dispute nor confers any substantive rights upon the parties; what is established is merely the maintainability of the suit which is sought to be initiated by the plaintiffs.*
>
> ***(ii) Conditions to be fulfilled for the applicability of Section 92CPC***

*43. Section 92 CPC has been created for a specific purpose and to address a specific kind of grievance which has the impact of affecting public rights as enumerated above. Therefore, not all suits can be blindly brought within the fold of this provision. In the facts and circumstances of each case, the court granting leave must examine whether the suit qualifies certain conditions which align with the intent behind the creation of this provision**. **<u>Courts must tread with caution so as to weed out those suits which are camouflaged as falling within its ambit just with a view to take an undue benefit of provision and for causing harassment to the public trust or for the vindication of personal rights.</u>***

*44**.** This Court in Ashok Kumar Gupta [Ashok Kumar Gupta v. Sitalaxmi Sahuwala Medical Trust, (2020) 4 SCC 321:(2020) 2 SCC (Civ) 301] had laid down three conditions which are a sine qua non in order to invoke Section 92CPC and maintain an action under the said provision. Upon placing reliance on various decisions of this Court, the conditions were delineated as follows —*

(a) the trust in question must be created for public purposes of a charitable or religious nature; (b) there must exist a breach of trust or a direction of the court must be necessary for the administration of the trust; and (c) the relief claimed must be one or other of the reliefs as enumerated under Section 92(1)CPC. The relevant observations are reproduced as thus: (SCC pp. 329-30, paras 10-12)

> *"10. While considering the scope of Section 92(1), as it existed then, a Constitution Bench of this Court observed in Madappa v. M.N.Mahantha devaru [Madappa v. M.N. Mahanthadevaru, 1965 SCC OnLine SC 110 : (1966) 2 SCR 151 : AIR 1966 SC 878] , as under: (SCC OnLine SC para 9)*
>
> > *'9. **<u>Section 92(1) provides for two classes of cases, namely, (i) where there is a breach of trust in a trust created for public purposes of a charitable or religious nature, and (ii) where the direction of the court is deemed necessary for the administration of any such trust. The main purpose of Section 92(1) is to give protection to public trusts of a</u>***

> ***charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that section can only be filed either by the Advocate General, or two or more persons having an interest in the trust with the consent in writing of the Advocate General. The object clearly is that before the Advocate General files a suit or gives his consent for filing a suit under Section 92,*** *he would satisfy himself that there is a prima facie case either of breach of trust or of the necessity for obtaining directions of the court.* ***The reliefs to be sought in a suit under Section 92(1) are indicated in that section and include removal of any trustee, appointment of a new trustee, vesting of any property in a trustee, directing a removed trustee or person who has ceased to be a trustee to deliver possession of trust property*** *in his possession to the person entitled to the possession of such property, directing accounts and enquiries, declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust, authorisation of the whole or any part of the trust property to be let, sold, mortgaged or exchanged or settlement of a scheme. The nature of these reliefs will show that a suit under Section 92 may be filed when there is a breach of trust or when the administration of the trust generally requires improvement…."*

[Emphasis Supplied]

32. As stated above, suit under Section 92 of the CPC is of a representative character and is instituted for vindication of public rights in respect of a public charitable or religious trust. The maintainability of such a suit is contingent upon the existence of foundational

requirements, namely, an allegation of breach of trust or the necessity for directions of the Court in the administration of the trust, and the institution of the suit in a representative capacity for protection of public interest.

33. The plaint in the present case was filed by 3 persons claiming to be Trustees. The entire case of the respondents/plaintiffs is based on a breach of a Trust in view of the amendment to the Trust Deed in the year 2008. However, and as stated above, the respondents/ plaintiffs have been unable to show as to what exactly was the breach of this Trust. The plaint sets out that amendments carried out are essentially not in consonance with the Will of the settlor and that the amendment has been carried out with the connivance of defendant Nos.2 and 3. However, how the amendment has lead to breach of Trust and how the appellant No.2 and 3/defendant Nos.2 and 3 are acting against the Trust or the Trustees has not been explained nor is there any reference of any

specific breach of fiduciary duty which is affecting the public at large.

34. A review of the evidence reflects that in the affidavit of examination-in-chief dated 25.03.2011, PW-1 has reiterated the contents of the plaint. It is deposed that as per the Trust Deed the Life Trustees do not have any right to appoint any other Life Trustees and if an amendment is to be carried out, there has to be a resolution passed by 3/4th Trustees present in the Meeting. In addition, it is deposed that it is evident from the preamble of the Trust Deed that no amendments shall be carried out to defeat the basic structure of the Trust and that the Defendants have actively connived to carry out the amendment of the Trust Deed dated 28.02.2008. The relevant extract of the Affidavit in evidence of PW-1 is set out below:

> *"9. I submit that according to the Trust Deed, this stands amended as on 01.01.1998, the life trustees of the trust are only two in numbers, namely the defendant No.2 herein and one Sri.T.S.Shamarao.* ***<u>These Life Trustees do not have any manner of right whatsoever to appoint one more life trustee. According to the said</u>*** *trust deed after the tenure of life trustees, the appointment of any other person as trustee shall hold good only for a period of five years. The post of life trustee is not a hereditary post and the appointment to the vacancy to the same*

is regulated by the trust deed according to which, the appointment of any persons to such vacancy can hold office for a period of five years like other trustees. ***Likewise, if any amendment to the Trust Deed is to be carried out there has to be a resolution passed in a meeting of board of trustees with 3/4th majority of the trustees present in the meeting and also it is provided in the trust deed*** *that any amendment that has to be carried out should not be repugnant to the provisions of Section 2(15), Section 11 to 13 and Section 80(g) of the Income Tax Act 1951. Further, it is also mandatory to obtain prior approval of Income Tax Department to carryout any amendment to the Trust Deed.*

xxx xxx xxx

11. ***It is further evident from the preamble of the Trust Deed that no amendment can be carried out so as to defeat the basic structure of the said Trust, that being the last Will of the Late' Swamiji, Sri. Chidambara Swamy. It is further evident from the*** *Trust Deed at clause No. 6 that the post of the President and of the Managing Trustee are two independent posts carrying separate qualifications, powers and functions. Whereas the President is to be selected from the Board of Trustees, the Managing Trustee on the other hand is to be appointed by the Board of Trustees.*

12. ***While this being so, the defendant No. 2 & 3 having actively connived, to carry out an amendment vide amendment of Trust Deed dated 28-2-2008 where under the defendant No. 2 has*** *assumed unilateral powers so as to appoint the defendant No. 3 as life trustee contemplating him to be the next Managing Trustee, thereby giving unilateral powers to a life Trustee and to the Managing Trustee, totally in derogation of the basic structure of the original Trust Deed dated 29-04-1990 and also repugnant to the prevailing rules which regulate the administration of the trust. This illegal amendment clearly manifest the malafide intention of defendant No. 2 where under he has intended to keep the post of Managing Trustee as a hereditary post and to play a despotic role in the administration of the Trust."*

[Emphasis Supplied]

34.1 However, PW-1 in his cross-examination has admitted that he had no personal knowledge of several material aspects, including the contents of the Will, and that his understanding was based on information received from others. He has further stated that he was not aware of the proceedings of the meetings in question and did not have clear knowledge regarding the resolutions sought to be challenged. It is also elicited that the pleadings have been made based on statements made by others and not on the basis of personal knowledge. In addition, it is admitted that the respondent No.2/plaintiff No. 2 was not a trustee at the time of institution of the suit and that only respondent No.2/plaintiff no.3 is a Trustee whose term is about to expire. The witness also admits to attending one of the general body meetings which has been challenged in the plaint. The relevant extracts from the cross-examination of PW-1, dated 20.04.2013, 27.04.2013 and 03.08.2013 is set out below:

> *"21. I was appointed* ***as a trustee of the Chidambaram Ashram Trust in 2003. My term as***

__trustee expiring in the month of May.__ *I do not remember on which date I was appointed as a trustee.* ***__I do not know the dates on which the Ist plaintiff, R.S.Sharma was appointed and retired as a trustee. The 2nd plaintiff, Ganesha Rao, was a trustee for about 10 years till 2008.__*** *It is true to suggest that he was not a trustee at the time of filing the present suit in 2009.*

XXX XXX XXX

24. I am aware that Swamiji executed a will dated 10.12.1954 and a codicil dated 12.6.1963. In his will, he instructed that the Ashram should be managed by a committee and that the blood relatives of Swamiji should not be the members of the committee. I have mentioned these facts in my pleadings and affidavit. ***__The said will and codicil have not been produced before court. I have neither seen the will nor the codicil or their copies. We came to know about the will and codicil from the 2nd defendant Shiva Chidambara Sharma, in the year 1994 I came to know about them.__*** *I have seen the Swamiji in person for a period of about 1 year 4 months. Swamiji's Father, Mother, Senior uncle, Junior uncle and their children were never visited Ashram. As I am aware, Swamiji has never introduced anybody as his blood relatives.*

XXX XXX XXX

26. ***__It is true to suggest that the 1st defendant Trust is required to submit report to the general body meeting of the members, and to follow the resolutions passed in such General body meetings. It is true to suggest that, even during my tenure as a trustee, no notice used to be given to the devotees on the occasions of Datta Jayanti and Swamiji Jayanti.__***

27. I am aware of the handwriting and signatures of R.S. Sharma and Ganesh Rao. If it is put it to you that you, R.S. Sharma and Ganesh Rao were present at the General body meeting held on 23.12.2007, witness states that I was not present and I do not know whether the other two were present or not.

(At this stage, cross-examination deferred at the request of the defendant's counsel.)

*28. During the tenure of my trusteeship, **the 1st plaintiff, R.S. Sharma, was also serving as a trustee. The 2nd plaintiff, Ganesh Rao, had retired. I knew them prior to becoming a trustee**. It is true to suggest that I used to attend the Datta Jayanti and Swamiji's worship ceremonies, apart from trust meetings. It is true to suggest that I did not visit the ashram on any other occasions. The 1st and 2nd plaintiffs occasionally visits the ashram. Even before I was appointed as a trustee, I have visited the ashram on special occasions. **We have stated in the plaint regarding the trust deed and the amendments made thereto, based on statements now and then made by the chairman.***

XXX XXX XXX

*30. For the suggestion made that you have spoken in a meeting where Mahesh Joshi and Koladamutt Swamiji were present, the witness states that I had spoken four or five such meetings. I do not remember whether the Ist and 2nd plaintiffs attended such meetings. **It is true to suggest that I was present in the meeting held on 23.12.2007. I do not remember whether I was present in the meeting held on 31.01.2009. It is in correct to suggest that I was present in the meeting held on 10.02.2008. I do not remember whether the 1st and 2nd plaintiffs did attend the meeting held on 23.12.2007. It is incorrect to suggest that I am aware of the proceedings in the meeting held on 23.12.2007.** The witness says that he was given the responsibility of arranging the food and he was busy with it. I had been given the responsibility of arranging the food many a times.*

*35. **The 3rd Defendant, Dr.S.S.Sachidananda, was not eligible to become a trustee. His father is already a trustee, and his blood relatives were therefore ineligible to become Trustee.** It is not true to suggest that there are no such disqualifications either in Swamiji's will, or in the Trust deed or in the amended Trust deed. It is incorrect to suggest that despite we do not have proper information about the present case, on the basis of hearsay, we have unnecessarily filed this suit."*

[Emphasis Supplied]

(c) Amended Trust Deed Dated 28.02.2008:

35. A review of the Amended Trust Deed shows that the Trust has convened a meeting on 23.12.2007 and another on 10.02.2008 and passed a resolution to appoint another Life Trustee and in pursuance of the same, the Life Trustee / appellant No.2/defendant No.2 has appointed his son as a Life Trustee. The Amended Deed further states that the appointment of appellant No.3/defendant No.3 shall be irrevocable and he shall be a Trustee for life and that the other life Trustees are qualified to appoint a suitable Life Trustee and also Other Trustees to the Trust. The relevant extract of the Amended Trust Deed of 2008 Exhibit-P1 is set out below:

> *"Sri Chidambarashrama Trust, Gubbi*
> *AMENDMENT OF TRUST DEED*
>
> *This amendment of trust deed is made and executed on **28th February 2008 Chidambara Ashrama Trust** represented by its President, Managing trustee-and-Sole Trustee Srl.Shivachidamabara Sharma*
>
> *Whereas the by a deed of Trust dated:29-04-1990 the above said trust was constituted and the same was registered in the office of the Sub Registrar: Gubbi vide document NO.494/90-91 in book-1 Vol.9AR52 at pages 71-76 herein after called the principal Deed*

*Whereas Chidambarashrama Trust has **convened an Annual General Body meeting at Chidambarashtama Gubbi on 23rd December 2007, followed by yet another general body meeting on 10 February 2008.** In the said meeting the committee has discussed several subject matters touching the objectives enumerated in the will of HH Sri Chidambara Swamiji, the founder of Sri Chidambarashrama and the Trust-Deed arrived there from and **passed a resolution authorizing the sole surviving Life trustee and the present president/Managing Trustee Sri Shivachidambara Surma to appoint another suitable Life Trustee to the Trust. Further,** Sri Sivachidambarasarma was also empowered to appoint other trustees and to amend the existing trust deed for ensuring the continued fulfilment of the objectives of the Ashrama in accordance with the guidelines laid down by H H Swamiji in his registered will which establishes the basic legal structure for the Ashrama*

xxx xxx xxx

Now this Amended Trust deed witnesses as follows:-

1. That Dr.S.S.Satchidananda is appointed as the Life Trustee and his appointment shall be irrevocable and he shall be Trustee for life.

2. Only a Life Trustee shall be the managing trustee of the trust. Only the Life Trustee shall have the powers to initiate any and further amendments to this Trust Deed.

3. Only the Life trustee shall be vested with full and unqualified power to appoint another suitable life trustee and also other trustees to the trust.

4. The life trustee is authorized and vested with full powers and authority including financial powers and operation of bank transactions to carry out the objectives of the trust by taking the support, help and suggestions of the board of trustees.

5. The Managing Trustee shall have the power to appoint staff/workers/employees /servants etc., to and to carry out *day to day affairs of the trust and shall be the sole final authority in regard to the Ashram affairs.*

6. The Managing Trustee shall have the power to carry out all the activities and work relating to the Ashrama in accordance with the objectives and framework established by the H.H.Swamiji in his will and he shall also have full powers to make rules for the working of the Ashrama and its developmental activities."

[Emphasis Supplied]

35.1 The Amended Trust Deed provides that the amendment is being made on behalf of the Trust represented by its President and its Managing Trustee and sets out that defendant No.2, Sri.Shivachidambara Sharma has been authorized to appoint another Life Trustee and in pursuance thereof has appointed Dr.S.S.Satchidananda as a Life Trustee, whose appointment is irrevocable. The deed also sets out that the appellants/defendants acted in accordance with the dictum of the General Body Meeting held on 23.12.2002 and 10.02.2008.

36. The appellants/defendants state that the respondents/plaintiffs were present at the meeting and had signed the resolution. It is further been averred that

the Supreme body of the Ashram has made arrangements to appoint Life Trustees and hence whatever has been done has been done by the authority of the General Body. However, they have not produced either the minutes of the meeting nor any documents related to the amendment. This has led to the learned Trial Court drawing an adverse inference against the appellants/defendants.

37. Despite the aforesaid, the fact still remains that in terms of Section 92 of the CPC there has to be a breach of public duty which has to be brought out. The pleadings and evidence reproduced above, do not disclose any specific of breach of trust, diversion or misuse of trust property, or mismanagement affecting the public at large. No pleading or evidence is placed on record reflecting a breach or how such breach has affected the public.

38. The Original Trust Deed reflects that for the objects as set out in the Trust Deed, the number of Trustees is required to be not less than 8 and no more than 12. The

clauses *qua* the vacancy and powers of the Trustees have been referred to as above. There is however no requirement in the Trust Deed for a $3/4^{th}$ majority for an amendment. Clause 15* does provide for a framing of Rules and a $3/4^{th}$ majority for amending such By-laws and Rules. Clause 17 provides that if the Trust should fail or it is resolved to dissolve the Trust, then such a decision would be taken either unanimously or by not less than three fourths majority of the Trustees. However, no Rules/Bylaws have been produced by the respondents/plaintiffs.

39. The testimony of PW-1, also does not help the case of the plaintiffs. PW-1 has categorically admitted that he had no personal knowledge regarding material aspects of the Trust, including the contents of the Will and the proceedings of the meetings in question. PW-1 has further deposed that he has attended one of the proceedings of the meetings wherein the resolutions were passed. These admissions clearly indicate that the respondents/plaintiffs have failed to establish any factual basis for alleging

** See Para 26.1 Above*

breach of trust or illegality in the administration of the Trust.

40. Undisputedly, the Trust was reduced to only one Life Member of the Trust, being the appellant No.2/defendant no. 2. The reason stated in the Amendment Deed of 2008 reflects that since only one Life Trustee remained it was necessary to appoint another. The amendment is stated to have the support of the General Body of the Trust in terms of Meetings held on 23.12.2007 and 10.02.2008. The only evidence that has been placed on record by the respondents/plaintiffs is the deposition of PW-3, who himself claims to have attended the meeting on 23.12.2007. In addition and as stated above, how this amendment has impacted public rights is not forthcoming either.

41. Further, it is also admitted that the 2nd plaintiff was not a trustee at the time of institution of the suit. The material on record thus does not establish that the plaintiffs were persons having a real and substantive

interest in the Trust so as to maintain a representative action under Section 92 of the CPC.

42. The Supreme Court in ***Vidyodaya Trust***'s case held that a suit under Section 92 of the CPC is of a special nature and is maintainable only when it is instituted for vindication of public rights and not for enforcement of individual or private rights. The Supreme Court has further held that even if the reliefs claimed fall within those enumerated under Section 92 of the CPC, the Court must examine the dominant purpose of the suit, the capacity in which the plaintiffs have instituted the suit, and whether the action is truly representative in character. It has been held that a suit whose primary object is to assert or vindicate personal or individual rights would fall outside the scope of Section 92 of the CPC. The relevant extract of ***Vidyodaya Trust***'s case is given below:

> *"17. In Swami Paramatmanand Saraswati v. Ramji Tripathi [R.M. Narayana Chettiar v. N. Lakshmanan Chettiar, (1991) 1 SCC 48] it was held as follows : (SCC pp. 697-701, paras 5, 10-11 & 14)*
>
> > *"5. The main allegations in the plaint were that Brahmanand did not execute the will while he was in a sound disposing state of mind, that*

Respondent 1 had not the requisite learning in Sanskrit and the Vedas and, therefore, he was not qualified to be nominated as successor to the Headship of the Math, that he came into possession of the Math properties and has committed breach of trust by applying for grant of succession certificate and other acts, that Krishnabodhashram was duly installed as the Shankaracharya of the Math on 25-6-1953 and that direction of the Court was necessary for the administration of the Trust properties. The plaintiffs prayed for the removal of Respondent 1 from the Headship of the Math, a declaration that Krishnabodhashram was the duly installed Head of the Math and to appoint him as the Head, and in the alternative, to appoint any other competent person as the Head of the Math. They further prayed for vesting of the properties of the Jyotish Math in the new Head and for rendition of accounts by Respondent 1, etc., and to restrain him from prosecuting the application for succession certificate and also the mutation proceedings.

***

10. ***<u>A suit under Section 92 is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character.</u>*** *Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section.* ***<u>It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the rights of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit</u>***

would be outside the scope of Section 92 *[see N. Shanmukham Chetty v. V.M. Govinda Chetty [AIR 1938 Mad 92], Tirumalai Devasthanams v. Udiavar Krishnayya Shanbhag [AIR 1943 Mad 466], Sugra Bibi v. Hazi Kummu Mia [AIR 1969 SC 884] and Mulla : Civil Procedure Code (13th Edn.), Vol. 1, p. 400]. A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section.* ***It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights, and in deciding whether a suit falls within Section 92 the court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92.***

[Emphasis in Original]

11. We see no reason why the same principle should not apply, if what the plaintiffs seek to vindicate here is the individual or personal right of Krishnabodhashram to be installed as Shankaracharya of the Math. Where two or more persons interested in a trust bring a suit purporting to be under Section 92, the question whether the suit is to vindicate the personal or individual right of a third person or to assert the right of the public must be decided after taking into account the dominant purpose of the suit in the light of

__the allegations in the plaint.__ *If, on the allegations in the plaint, it is clear that the purpose of the suit was to vindicate the individual right of Krishnabodhashram to be the Shankaracharya,* ***__there is no reason to hold that the suit was brought to uphold the right of the beneficiaries of the Trust, merely because the suit was filed by two or more members of the public after obtaining the sanction of the Advocate General and claiming one or more of the reliefs specified in the section__****. There is no reason to think that whenever a suit is brought by two or more persons under Section 92, the suit is to vindicate the right of the public.* ***__As we said, it is the object or the purpose of the suit and not the reliefs that should decide whether it is one for vindicating the right of the public or the individual right of the plaintiffs or third persons__****.*

***

14. It is, no doubt, true that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92 (see Assn. of R.D.B. Bagga Singh v. Gurnam Singh [AIR 1972 Raj 263] , Sohan Singh v. Achhar Singh [AIR 1968 P&H 463] and Radha Krishna v. Lachhmi Narain [AIR 1948 Oudh 203]). ***__But, if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in facts or reason but is made only with a view to bring the suit under the section, then a suit purporting to be brought under Section 92 must be dismissed. This was one of the grounds relied on by the High Court for holding that the suit was not maintainable under Section 92."__***

XXX XXX XXX

__26. To put it differently, it is not every suit claiming reliefs specified in Section 92 that can be brought under the section; but only the suits which besides__

claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights. As a decisive factor the Court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was brought. The courts have to be careful to eliminate the possibility of a suit being laid against public trusts under Section 92 by persons whose activities were not for protection of the interests of the public trusts. In that view of the matter the High Court was certainly wrong in holding that the grant of leave was legal and proper. The impugned order of the High Court is set aside. The appeal is allowed but without any order as to costs."

[Emphasis Supplied]

43. In this context, reliance may also be placed on the judgment of the Supreme Court in ***Operation Asha***, wherein it has been clarified that the jurisdiction under Section 92 CPC is not intended to be invoked in matters arising out of disputes relating to internal administration of a trust, in the absence of demonstrable breach of trust or its impact on public rights. The said principle squarely applies to the present case, where the challenge is essentially directed against the amendment of the trust deed and the resolutions passed in that regard, without any substantiated allegation of mismanagement or public injury. The dispute being confined to internal

administration, the essential ingredients for invoking Section 92 of the CPC are not satisfied.

44. In the absence of any specific pleading or proof of breach of trust and in the absence on its impact on public rights, the necessity for directions of the Court in administration of the Trust would not arise.

45. In addition, the respondents/plaintiffs have not produced any material to substantiate the alleged illegality or arbitrariness in the amendment to the Trust Deed dated 28.02.2008 and the resolutions dated 23.12.2007 and 10.02.2008.

46. As observed earlier, the evidence of PW-1 does not establish any factual basis to hold that the resolutions were not validly passed or that the amendment was contrary to the governing framework of the Trust. On the contrary, it is admitted that the affairs of the Trust were conducted through the General Body and in accordance with the resolutions passed therein. PW-1 has also expressed lack of knowledge regarding the proceedings of the meetings in question.

47. The learned Trial Court, however, proceeded to declare the amendment and the resolutions as illegal and void without there being sufficient material on record to substantiate the same, and the findings in this regard are not borne out from the evidence on record.

X. Conclusion:

48. In the absence of any cogent evidence demonstrating illegality or breach of the governing scheme of the Trust, the interference by the learned Trial Court with the amendment to the trust deed cannot be sustained. The plaintiffs have failed to establish any illegality in the amendment to the trust deed dated 28.02.2008 or the resolutions dated 23.12.2007 and 10.02.2008 Thus, the suit instituted by the respondents/plaintiffs under Section 92 CPC was not maintainable. The findings of the learned Trial Court in this regard cannot be sustained.

49. Accordingly, this Appeal is ***allowed***. The Judgment and decree dated 28.02.2014 passed in O.S. No. 9/2010 by the I Additional District and Sessions Judge, Tumkur, is

hereby set aside. Pending applications, if any, stand closed.

50. In the facts and circumstances of the case, there shall be no order as to costs.

Digitally signed by DINESH KUMAR SINGH
Location: HIGH COURT OF KARNTAKA

(D K SINGH)
JUDGE

Digitally signed by TARA VITASTA GANJU
Location: HIGH COURT OF KARNTAKA

(TARA VITASTA GANJU)
JUDGE

YN / JJ