

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

Tuesday, the 10th day of January 2023 / 20th Pousha, 1944

CRP NO. 285 OF 2020

OP (SCHEME) 1/2017 OF SUB COURT, PUNALUR

REVISION PETITIONERS/RESPONDENTS 1 TO 19,12 & 13:

1. PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, REPRESENTED BY ITS PRESIDENT.
2. N.P. JOHN, AGED 68 YEARS, CHITHIRA, THOLICODU P.O, PUNALUR, PRESIDENT OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
3. ASHOK B. VIKRAMAN, AGED 61 YEARS, VIKRAMASILA, PUNALUR P.O, PUNALUR, SECRETARY OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
4. N. MAHESAN, AGED 68 YEARS, KOLLAMPARAMBIL VEEDU, MATHRA P.O, THOLICODU, PUNALUR, SCHOOL MANAGER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305.
5. ADOOR N. JAYAPRASAD, AGED 61 YEARS, ISWARYA BHARANIKAVU, PUNALUR, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
6. ADV. PRADEEP CHANDRAN, AGED 59 YEARS, AMBADIYIL, MATHRA P.O, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
7. ADV. S.M.KHALEEL, AGED 59 YEARS, PUNALUR ESTATE BUNGLOW, VALACODE P.O, PUNALUR, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
8. VIJAYA KUMAR, AGED 63 YEARS, K. ELLUKATTUVEEDU, ARAMPUNNA, PUNALUR, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
9. C. VIJAYAKUMAR, AGED 51 YEARS, VADAKKEKARA VEEDU, MANIYAR, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
10. C.P. SAMUEL, AGED 63 YEARS, CHAMKKARA PUTHEN VEEDU, KARAVLOOR P.O, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
11. S. NOWSHARUDEEN, AGED 61 YEARS, NABEEZATHU BUILDING, PUNALUR, CO-OPTED COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
12. PUNALUR TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305, REPRESENTED BY ITS PRESIDENT.

BY ADVS.MR.S.SREEKUMAR, SENIOR ADVOCATE ALONG WITH SRI.MANOJ RAMASWAMY

RESPONDENTS/PETITIONERS & RESPONDENT NO.11:

1. K.K.SURENDRAN, AGED 67 YEARS, S/O. KUNJU PILLAI, RESIDING NOW AT VEENA, VILAKKUVATTOM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305, (MEMBER NO. 362 OF THE PATHANAPURAM TALUK SAMAJAM).
2. ABRAHAM MATHEW, AGED 57 YEARS, S/O. ABRAHAM V. MATHAI, VILLIES COTTATE, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305, (MEMBER NO. 26/2 OF THE PATHANAPURAM TALUK SAMAJAM).
3. K.M. YOHANNAN, AGED 66 YEARS, KAVUMKAL HOUSE , (KAVUVILA HOUSE), BHARANIKKAVU, PUNALUR, KOLLAM DISTRICT-691 305 (MEMBER NO. 3768 OF THE PATHANAPURAM TALUK SAMAJAM).
4. N. JOEY (JOEY LUKKOSE), AGED 50 YEARS, S/O.LUKKOSE, CHARUVILAVEEDU, CHEMMANTHOOR, PUNALUR, KOLLAM DISTRICT-691 305, (MEMBER NO. 3120 OF THE PATHANAPURAM TALUK SAMAJAM).
5. KADAVIL BABU, AGED 64 YEARS, KADAVIL, THOLICODU P.O, PUNALUR CO-OPTED COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODE P.O, KOLLAM DISTRICT-691 305

BY ADVS.SRI.P.B.SAHASRANAMAN, SRI.T.S.HARIKUMAR & SMT.G.N.DEEPA FOR R1 TO R4

This CRP having come up for orders on 10.1.2023, upon perusing the petition, the court on the same day passed the following;



(p.t.o)

'CR'

A.MUHAMED MUSTAQUE & SHOBA ANNAMMA EAPEN, JJ.

**O.P. (C) Nos.2148/2019 & 430/2022 & CRP
No.285/2020**

Dated this the 10th day of January, 2023

O R D E R

A.Muhamed Mustaque, J.

This matter placed before us is based on an order passed by a learned Single Judge. The question placed before us, for the answer is as follows.

"Whether the Sub Court is competent to grant leave to institute a suit and, thereafter, try and dispose of the suit under Section 92 of the Code of Civil Procedure, 1908."

2. It is appropriate to refer to the relevant provisions of Section 92 of the Code of Civil Procedure, which reads as follows.

(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.

3. We also see one more question to be decided that has been referred to us by the learned Single Judge with regard to the power of the Additional District Court in granting leave to institute a suit and try a suit under Section 92 of the Code of Civil Procedure, 1908 (for short, the 'CPC'). At the outset we may state that, that question had not arisen for consideration before the learned Single Judge. We note that the learned Single Judge

adjourned this matter for determination by the Division Bench invoking power under Section 3 of the Kerala High Court Act, 1958. Therefore, the Division Bench can only answer the questions involved in the matter and not outside the *lis* which was pending before the learned Single Judge. If we answer reference on that question we have to render an academic answer rather than a decision on a judicial issue vexed by the court. It may not be proper for a Division Bench to answer a reference academically without there being a '*lis*' on the matter before the Court. Therefore, we are not proposing to determine the question whether an additional District Court has power to grant leave to institute under Section 92 of the CPC.

4. Section 92 of the CPC as originally stood, stipulates that the institution of suit under the above provisions must be with consent in writing by the Advocate General. Thereafter, an amendment was made in the year 1976 mandating the institution of the suit with leave of the court. This was the

substantial change made in Section 92 of the CPC.

5. In regard to the jurisdiction of the Court to entertain such a suit, it is mentioned in the above provisions itself. The Principal Civil Court of the original jurisdiction or any other court empowered in that behalf by the State Government within the local limits of the jurisdiction where the whole or any part of the subject matter of trust is situate to obtain a decree. The jurisdiction is the process of identifying the authority of the court to institute a certain nature and type of case. There are two parts as far as jurisdiction is concerned under Section 92 of the CPC, first part refers to Principal Civil Court of Original jurisdiction. Second part refers to, authorizing the State Government to confer such power on any other Courts notified by the State.

6. In exercise of the power conferred under Section 92 of the CPC, the Government of Kerala notified all respective Sub Courts in Kerala to try and dispose the cases under Section 92 of the CPC by

a notification on 24.10.1966. It is appropriate to reproduce the notification.

" CODE OF CIVIL PROCEDURE, 1908

(Act V of 1908)

(Section 92)

Empowering the Courts of Subordinate Judges of Kerala within the limits of their respective jurisdiction to try and dispose of cases under Section 92 of the Code of Civil Procedure

Notification No.G.O.(Ms) 384/66/Home dated 24 October, 1966

published in the Kerala Gazette dated 1st November, 1966.

Part 1, Page 528

(Home C)

NOTIFICATIONS

G.O. (Ms) 384/66/Home
October,
1966

Dated, Trivandrum, 24th

(i)

In exercise of the powers conferred by Section 2 of the Religious endowment Act 1863 (Central Act XX of 1863) the Government of Kerala, hereby empower the Courts of Subordinate Judges of Malabar District referred to in sub-section (2) of Section 5 of the States Reorganisation Act 1956 (Act 37 of 1956) within the limit of their respective jurisdiction to try and dispose of cases under the Religious Endowment Act 1863.

(ii)

In exercise of the powers conferred by section

of the Code of Civil Procedure (Act V of 1908) Government of Kerala, hereby empower the court Subordinate judges of Kerala, within the limits their respective jurisdiction, to try and dispose cases under section 92 of the Code of Civil Procedure.

By order of the Governor
XXXXX
Secretary

The present conundrum arises, especially in the light of the judgment of another learned Single Judge holding that the Additional District Court has no power to entertain an application to grant leave to institute a suit under Section 92 of the Code of Civil Procedure, in **Sree Gurudeva Charitable and Education Trust, Kayamkulam and others v. K. Gopalakrishnan and Others [2020 (5) KHC 343]** and also on the fact that the notification issued by the State Government of Kerala was in the year 1966 and the amendment mandating to obtain the leave from the court was brought in the statutory provision only with effect from 01.02.1977.

7. A notification was issued in the year 1966. The notification conferring jurisdiction on Sub

Court to try and dispose the cases under Section 92 of CPC was issued in the year 1966. The amendment incorporating "leave of the Court" in Section 92 of the CPC to institute a suit came with effect from 01.02.1977. Therefore it was doubted, whether the Sub Court has the power to try the suits Under Section 92 of the CPC without there being a further notification.

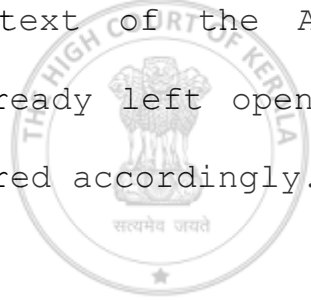
8. As per notification in the year 1966 the Sub Court have been conferred with the power to try and dispose the cases coming under Section 92 of the CPC. This is the jurisdictional aspects of the Sub Court. The purpose of obtaining leave incorporated in CPC in the year 1977 is as an institutional formality to be complied in a suit in the nature referred under Section 92 of the CPC. That being a institutional formality, it has to be complied by the litigant and it has nothing to do with the determination of the jurisdiction of the Court to try and dispose cases under Section 92 of CPC. Jurisdiction means an authority to entertain a suit

and render decision thereon in the context of the suits of Civil nature. Institutional formality of obtaining leave is a formality to be followed by a litigant for instituting a suit. If this distinction is kept in mind, there is no difficulty to hold that, the amendment incorporating the words 'leave of the Court' as in Section 92(1) will have no impact on the jurisdiction already conferred upon the Sub Court by notification in the year 1966.

9. The object behind obtaining leave under Section 92 of the CPC is to ensure that only genuine person having bonafide interest in the matter alone is permitted to move the Court to institute such suits under Section 92 of the CPC. The institutional formality obtaining leave thus ensures that only such genuine cases alone are entertained by the Civil Court, as the interest of such litigant has to be identified with the larger interest of the public trust under Section 92 of the CPC. Thus it shields such public trust from being harassed by unnecessary law suits against them.

This being an institutional formality it will in no way have any consequences on jurisdiction of the Sub Court to entertain such suits and try such cases. Therefore, there is no requirement to have a separate notification authorizing the Sub Court to grant leave.

As far as the judgment in **Sree Gurudeva Charitable and Education Trust** (*Supra*) the question arose in the context of the Additional District Court. We have already left open the question. The reference is answered accordingly.



Sd/-

**A MUHAMED MUSTAQUE
JUDGE**

Sd/-

**SHOBA ANNAMMA EAPEN
JUDGE**

SAAP