

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.9267 OF 2022(GM-CPC)

BETWEEN:

1. SHREE BEERESHWARA (CHANNAKESHWARA)
SWAMY DEVARU TEMPLE, SITUATED AT
SY. NO. 460 OF MARALIGA VILLAGE,
KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

REP. BY ITS PRESIDENT

H.C. CHANNEGOWDA, AGED ABOUT 67 YEARS,
S/O. LATE CHANNEGOWDA @ THAMMEGOWDA,
R/O. HEGGADEDODDI VILLAGE,
KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

2. SHREE BEERESHWARA (CHANNAKESHWARA)
SWAMY SEVA TRUST SITUATED AT MARALIGA,
GUDIDODDI AND HEGGADEDODDI, KOPPA
HOBLI, MADDUR TALUK, MANDYA
DISTRICT-571428.

REPRESENTED BY ITS HONORARY PRESIDENT,
M. MALLEGOWDA, AGED ABOUT 70 YEARS,
S/O LATE NINGEGOWDA, R/O GUDIDODDI VILLAGE,
KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

3. SHREE BEERESHWARA (CHANNAKESHWARA)
SWAMY SEVA TRUST, REP. BY ITS PRESIDENT
H.C. CHANNEGOWDA, AGED ABOUT 67 YEARS,

S/O. LATE CHANNEGOWDA @ THAMMEGOWDA,
R/O. HEGGADEDODDI VILLAGE,
KOPPA HOBBI, MADDUR TALUK,
MANDYA DISTRICT-571428.

4. SHREE BEERESHWARA (CHANNAKESHWARA)
SWAMY SEVA TRUST REP. BY ITS VICE PRESIDENT
G.C. CHIKKAIAH, AGED ABOUT 60 YEARS, SON OF
LATE YALAVAIAH, R/O GUDIDODDI VILLAGE,
KOPPA HOBBI, MADDUR TALUK,
MANDYA DISTRICT-571428.

5. SHREE BEERESHWARA (CHANNAKESHWARA)
SWAMY SEVA TRUST REP. BY ITS GENERAL SECRETARY
M C MARI HEGGADE, AGED ABOUT 60 YEARS, S/O
MARIHEGGADE R/AT MARALIGA VILLAGE AND POST,
KOPPA HOBBI, MADDUR TALUK,
MANDYA DISTRICT-571428.
(DELETED VIDE ORDER DATED 27.06.2022)

6. SHREE BEERESHWARA (CHANNAKESHWARA)
SWAMY SEVA TRUST REP. BY ITS JOINT SECRETARY,
M.C. YATHISH KUMAR, AGED ABOUT 46 YEARS,
S/O. M.CHANNEGOWDA, R/O MAALIGA VILLAGE AND
POST, KOPPA HOBBI, MADDUR TALUK, MANDYA
DISTRICT-571428.
(DELETED VIDE ORDER DATED 27.06.2022)

7. SHREE BEERESHWARA (CHANNAKESHWARA)
SWAMY SEVA TRUST REP. BY ITS ORGANIZING
SECRETARY CHANDRU, AGED ABOUT 50 YEARS, R/O.
KODIDODDI VILLAGE AND POST, KOPPA HOBBI, MADDUR
TALUK, MANDYA DISTRICT-571428.

8. SHREE BEERESHWARA (CHANNAKESHWARA)
SWAMY SEVA TRUST REP. BY ITS TREASURER,
M.V. ASHOKA, AGED ABOUT 45 YEARS,
S/O VENKATACHALA GOWDA, R/O. MARALIGA

VILLAGE AND POST, KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

9. SHREE BEERESHWARA (CHANNAKESHWARA)
SWAMY SEVA TRUST REP. BY ITS ADVISOR
NANJEGOWDA, AGED ABOUT 45 YEARS,
S/O LATE CHANNEGOWDA, R/O. MARALIGA VILLAGE,
AND POST, KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

SHREE BEERESHWARA (CHANNAKESHWARA)
SWAMY SEVA TRUST, REP. BY TRUSTEES

10. LAKKA HEGGADE,
AGED ABOUT 80 YEARS,
SON OF LATE KESARE CHIKKA HEGGADE,
R/O. MARALIGA VILLAGE, MARALIGA POST, KOPPA HOBLI,
MADDUR TALUK, MANDYA DISTRICT-571428.

11. KRISHNA
AGED ABOUT 51 YEARS,
SON OF LATE PCOJARI LAKKA HEGGADE,
R/O. MARALIGA VILLAGE, MARALIGA POST, KOPPA HOBLI,
MADDUR TALUK, MANDYA DISTRICT-571428.

12. EREGOWDA
AGED ABOUT 45 YEARS, SON OF
MARICHANNEGOWDA, R/O. MARALIGA
VILLAGE, MARALIGA POST, KOPPA HOBLI, MADDUR
TALUK, MANDYA DISTRICT-571428.

13. M. N. APPAJI
AGED ABOUT 48 YEARS,
S/O LATE NANJEGOWDA, R/O MARALIGA VILLAGE,
MARALIGA POST, KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

14. H. ARUVA
AGED ABOUT 46 YEARS,

S/O. LATE HONNAIAH, R/O. MOODALADODDI VILLAGE,
MARALIGA POST, KOPPA HOBOLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

15. M. K. ASHOK
AGED ABOUT 43 YEARS,
S/O. LATE KEMPEGOWDA, R/O. MARALIGA VILLAGE,
MARALIGA POST, KOPPA HOBOLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

16. BORAI AH
AGED ABOUT 70 YEARS,
S/O LATE SIDDIAH, R/O. HEGGADEDODDI VILLAGE,
KOPPA HOBOLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

17. JAVARAYI
AGED ABOUT 58 YEARS,
S/O ARUVA HEGGADE, R/O. HEGGADEDODDI VILLAGE,
KOPPA HOBOLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

18. CHANNEGOWDA
AGED ABOUT 64 YEARS,
S/O CHIKKA HYDEGOWDA,
R/O. HEGGADEDODDI VILLAGE,
KOPPA HOBOLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

19. M. D. KRINACHARI
AGED ABOUT 42 YEARS,
S/O DASACHARI, R/O. HEGGADEDODDI VILLAGE,
KOPPA HOBOLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

20. SHIVANNA
AGED ABOUT 46 YEARS,
S/O. HONNASHETTY, R/O. HEGGADEDODDI VILLAGE,

KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

21. M. H. JAVARAYI
AGED ABOUT 46 YEARS,
S/O. HUCHA HEGGADE, R/O. HEGGADEDODDI VILLAGE,
KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

22. H. RAJU
AGED ABOUT 58 YEARS,
S/O LATE HONGANOORA HEGGADE,
R/O. HEGGADEDODDI VILLAGE,
KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

23. SMT. RANGALAKSHMAMMA
R/O. MARALIGA VILLAGE, MARALIGA POST,
KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

24. CHANNAPPA
AGED ABOUT 56 YEARS,
S/O. KUNTAIAH, R/O. MARALIGA VILLAGE,
MARALIGA POST, KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

...PETITIONERS

(BY SRI.D.R.RAVISHANKAR, SR.COUNSEL FOR
SRI.SACHIN B S, ADVOCATE;
V/O DTD: 27/06/2022 P5 & 6 ARE DELETED)

AND:

1. G. N. SATHYA
ADVOCATE,
AGED ABOUT 43 YEARS,
S/O NARAYANAGOWDA G.H., RESIDENT OF

GOLLARADADDI VILLAGE, KOPPA HOBOLI, MADDU TALUK,
MANDYA DISTRICT-571428.

2. K. DEVARAJU
ADVOCATE,
AGED ABOUT 42 YEARS, S/O LATE DASAIAH,
R/O KOPPA VILLAGE AND HOBOLI, MADDU TALUK,
MANDYA DISTRICT-571428.

3. H. K. SHIVAKUMAR
ADVOCATE,
AGED ABOUT 50 YEARS, S/O LATE KARIGOWDA,
R/O HARALAKERE VILLAGE, KOPPA HOBOLI,
MADDUR TALLUK, MANDYA DISTRICT-571428.

4. JEEVAN. M. H
AGED ABOUT 33 YEARS, AGRICULTURIST
S/O HONNEGOWDA, R/O. MARALIGA VILLAGE AND POST,
KOPPA HOBOLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

5. M. C. CHANNEGOWDA @ RAMANNA
AGED ABOUT 86 YEARS, S/O LATE KARIGOWDA,
R/O. MARALIGA VILLAGE, MARALIGA POST,
KOPPA HOBOLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

6. M. C. CHANNAIAH
AGED ABOUT 78 YEARS,
S/O LATE KARICHANNAIAH,
R/O. MARALIGA VILLAGE, MARALIGA POST,
KOPPA HOBOLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

7. THE DEPUTY COMMISSIONER
MANDYA DISTRICT,
MANDYA-571401.

8. THE TAHSILDAR
MADDUR TALUK,
MADDUR-571428.

9. THE DISTRICT REGISTRAR OF SOCIETIES
OFFICE SITUATED OPPOSITE TO DDPI OFFICE,
STADIUM ROAD, MANDYA-571404.

10. M. BYRASHETTY @ KRISHNA
S/O LATE GAVISHETTY,
AGED ABOUT 65 YEARS.
R/O MARALIGA VILLAGE,
KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

11. CHALUVEGOWDA
S/O LATE EREGOWDA,
AGED ABOUT 65 YEARS,
R/O MARALIGA VILLAGE,
KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

12. VINAY M. C.
S/O LATE EAREGOWDA,
AGED ABOUT 65 YEARS,
R/O MARALIGA VILLAGE,
KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

13. M. H. LAKKAPPA
S/O HUTCHIAIAH,
AGED ABOUT 65 YEARS,
R/O MARALIGA VILLAGE,
KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

14. THAMMAIAH. G. H.
S/O HONNAPPA, AGED ABOUT 43 YEARS,
R/O. GUDIDODDI VILLAGE, MARALIGA

DHAKLE, KOPPA HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

...RESPONDENTS

(BY SRI.G.V.CHANDRASHEKAR, SR.COUNSEL FOR
MS.APEKSHA.D, ADVOCATE FOR C/R1-4;
SMT.H.R.ANITHA, HCGP FOR R7-9;
V/O DTD 27/06/2022 R10-14 ARE D/W)

THIS PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD 18.04.2022 IS MISC.CASE NO.71 OF 2020 ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE. MANDYA TO THE EXTENT OF PASSING THE ORDER HOLDING THAT IT IS NECESSARY TO DISPOSE OF IA II BEFORE GRANTING LEAVE, AS PER ANNEXURE-A.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.07.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petition is filed by defendants questioning the order of the Court below passed on I.A.No.II under Section 94(d)(e) read with Order LX Rule 1 and Section 151 of CPC seeking appointment of receiver to manage the financial affairs, assets of defendant No.2-Trust.

2. The plaintiffs-respondents 1 to 4 herein have instituted a scheme suit under Section 92 of CPC against the petitioner 1 and petitioner No.2-Trust. In the suit, respondents 1 to 4 have sought prayer to remove the present office bearers of the Trust namely petitioners 2 to 9 and 10 to 33 and to form a scheme and appoint a fresh committee and consequently, sought for a direction to petitioners 2 to 9 to submit accounts from 13.9.2011 to till the date of filing of the suit.

3. On receipt of notice, the present petitioners appeared and filed objections to I.A.No.1. The present petitioners have also tendered objections to the application filed in I.A.No.2 seeking appointment of receiver.

4. The present petitioners approached this Court assailing the order dated 24.8.2021 and

7.9.2021 by filing a writ petition in WP.20158/2021. One of the main contentions urged before the Co-ordinate Bench of this Court was that the district Court before whom a scheme suit is filed cannot be entertained before adjudicating the application filed under Section 92 seeking leave to prosecute the scheme suit. The Co-Ordinate Bench of this Court vide order 4.12.2021 disposed of the writ petition thereby directing the District Court to examine as to whether the application filed in I.A.No.II can be decided before granting leave.

5. Pursuant to the order passed by the Co-ordinate Bench of this Court, the District Court has taken up I.A.No.II for hearing. The Court below pursuant to disposal of the writ petition in W.P.No.20158/2021 has allowed the application filed in I.A.No.II and thereby appointed the Tahsildar as a receiver.

6. The said order is questioned by the petitioners, who are respondents in Miscellaneous proceedings bearing Misc.No.71/2020.

7. Sri.D.R. Ravishankar, learned Senior Counsel appearing for the present petitioners would vehemently argue and contend that under Section 92 of CPC, leave of the Court is a pre-condition for institution of suit against public trust. Therefore, he would contend that unless the Court decides the leave application, the Court has no jurisdiction to pass any orders. He would further submit that even while granting leave, the Court has to be satisfied *prima facie* the allegations made in the plaint whether leave is to be granted or not. He would vehemently argue and contend that the Court below erred in deferring consideration of the application seeking leave and therefore, he would contend that the order under challenge is illegal and therefore, the same is not

sustainable. Referring to provisions of Order LX Rule 2 of CPC, he would contend that if there is no leave then there is no suit and therefore, Court lacks jurisdiction in entertaining any applications till Court decides an application pending seeking leave. Referring to Rule 17 of Civil Rules of Practice, he would contend that it mandates proper institution of suit . He would also refer to Section 94(d) of CPC and contend that Section 94 clearly indicates that to entertain supplementary proceedings, the Court can pass appropriate orders to prevent the ends of justice from being defeated, if it is so prescribed.

8. To buttress his arguments, he has placed reliance on the judgment rendered by this Court in the case of Sampkhand Mandal Panchayath .vs. Kusumakara Vishnu Kodiya¹ ILR 2008 KAR 2378. Taking this Court through paragraph 5, he would

¹ ILR 2008 KAR 2378

contend that there are specific provisions contained in the Code, which contemplates filing of suit for various reliefs. He would contend that Co-Ordinate Bench in the above cited judgment has clearly held that Section 94 of CPC which relates to supplemental proceedings also does not enable the Court to pass an order of temporary injunction without there being a properly instituted suit.

9. Learned Senior Counsel has also relied on following judgments:

1. (2002) 0 AIR(Ker) 47 – Govindan Vs Koovalasser S.M.K.Trust.

2. (1982) 0 KLT 790 – Sulaiman Vs. Chunakara S.M.Jama Ath.

3. (1945) 0 AIR (All) 261 – Mohammad Ali Khan Vs. Ahmad Ali Khan and ors.

4. (1964) 0 AIR(All) 366 – Ram Khelawan Vs Sudama Devi.

5. 1(2004) (9) SCC 720 - In B.S Adityan and Ors Vs. B.Ramachandran Adityan and Ors.

6. 2 (1991) 1 SCC 48 – In R.M.Narayana Chettiar and Anr. Vs. N.Lakshmanan Chettiar and Ors.

7. (2008) 0 AIR (SC) 1633 – Vidyodaya Trust Vs Mohan Prasad R.

8. (2020) 0 AIR(SC) 1257 – Ashok Kumar Gupta Vs. Sitalaxmi Sahuwala Medical Trust.

9. (1983) 0 AIR(Ker) 5 – Mathew Vs. Thomas.

10. WRIT PETITION.5039/2013 (GM-CPC) – Sri. L.Shivalingaiah S/o Late Lingaiah.

11. (2019) 0 Supreme (SC) 2271 Bhupinder Singh Vs. Joginder Singh (D) by LRs.”

10. Lastly, he would place reliance on the judgment rendered by the Apex Court in the case of ***Bhupinder Singh vs Joginder Singh(D) by Lrs. and others***². Placing reliance on the said judgment, he would contend that the Apex Court has clearly held that grant of leave is a necessary pre-requisite before the suit under Section 92 can be entertained. Placing reliance on the above said proposition, the

² (2020) 18 SCC 243

learned Senior Counsel would conclude his arguments by contending that the impugned order passed by the Court below on I.A.No.II is one without jurisdiction and the Court erred in entertaining the application filed in I.A.No.II and therefore, the same is liable to be set aside by this Court.

11. Sri.G.V. Chandrashekar, learned Senior counsel appearing for the counsel appearing for caveator/respondents 1 to 4 countering the arguments canvassed by the counsel appearing for the petitioners would however support the order under challenge. Placing reliance on the judgment rendered by the Allahabad High Court in the case of ***Vir Digambar Jain Dharmashala and Sri. Mahavir Jain Dharmarth Aushadhalai(Trust) and another vs. Pramod Kumar Jain and others***³ he would contend that the Court has vide powers under Section

³ 2008 SCC Online All 445

94 to meet out any contingencies and in order to prevent the ends of justice, is vested with jurisdiction to pass appropriate orders. Referring to Section 94 he would contend that it is a leading provision summing up the general powers of the Court in regard to various kinds of interlocutory orders. He would further point out that the Supreme Court has expressed the view that Courts have inherent jurisdiction to issue temporary injunction or any suitable orders not covered under Order XXXIX. Therefore, he would contend that it would equally apply to other orders referred to under Section 94. He would further contend that Court cannot be a mute and silent spectator to the illegal acts and therefore, he would submit that the Court below having regard to the facts and circumstances of the case was justified in exercising inherent power. Placing reliance on the judgment rendered by the Allahabad High

Court, he would contend that the Court in exercise of inherent power can pass suitable orders so as to preserve and protect public trust properties during the pendency of the application for leave under Section 92 of the Code. Banking on the propositions laid down by the Allahabad High Court in the judgment cited supra, he would contend that the Courts are not precluded in taking cognizance of situation and even in absence of express provision in the Code, the Court can usurp the inherent jurisdiction conferred under Section 151 of CPC. and pass appropriate orders. He would point out that the jurisdiction to protect the property pending ascertainment of rights is inherent in any Court and the Courts are duty bound to safeguard them.

12. Heard the learned Senior Counsel for the respective parties and perused the order under challenge. I have also gone through the judgments cited by the rival parties.

13. The following points would arise for consideration:

"1. Whether the impugned order is in compliance of direction issued by this Court in W.P.No.20158/2021?"

2. Whether the Court below erred in entertaining an application filed under Section 94(d)(e) of CPC seeking appointment of receiver by deferring the application filed in I.A.No.I seeking leave to prosecute the suit under Section 92 of CPC.?"

14. **Regarding Point No.1:**

The Co-Ordinate Bench of this Court while disposing of the writ petition has issued following directions which reads as under:

"(i). The petition stands disposed of calling upon the district Court to first consider the question: whether the contesting respondents' application under Order XL of CPC for appointment of a Receiver must be considered

only after the sanction is accorded, and decide the other questions/ applications later.

(ii) This question in any event shall be decided as aforesaid with reasonable opportunity to the contesting parties within a period of six weeks from the date of receipt of a certified copy of this order."

14(a) Therefore, the Court below in terms of directions issued by this Court was required to examine as to whether the plaintiffs' application seeking appointment of receiver can be considered only after sanction is accorded. Para 22 of the impugned order would clinch the issue covered under Point No.1. In terms of the directions of this Court, the learned Judge has not examined as to whether an application in I.A.No.II can be decided pending consideration of leave sought to prosecute the suit under Section 92 of CPC. At Para 22, the learned Judge has clearly reflected the conduct of the plaintiff's in protracting the hearing of I.A.No.I filed under Section 92 of CPC. The learned Judge observed

in view of the directions issued by this Court in W.P.20158/2021, the present application has to be disposed of.

14(b) What can be gathered from para 22 of the impugned order under challenge is that the learned Judge has not applied his mind. There is no adjudication in regard to the maintainability of the application in I.A.No.II pending consideration of I.A.No.I. The learned Judge proceeds on the assumption that on account of dispute between the parties, it may affect the development of temple. On this flimsy ground, the learned Judge has virtually allowed I.A.No.II without assigning reasons as to whether there are sufficient materials which would warrant appointment of receiver.

14(c) There has to be some tangible material which would warrant appointment of receiver. The appointment of receiver can be justified on facts when

there are prima facie material which clearly indicates that property is being wasted or decipitated at the hands of person in occupation. Receiver is appointed to protect and preserve the property. The impugned order is not supported by reasons. Therefore, this Court is of the view that the impugned order is in gross violation of the directions issued by this Court. Accordingly, Point No.1 is answered in negative.

15. **Regarding Point No.2:**

The Apex Court in the latest judgment rendered in the case of **Bhupinder Singh** at Paragraph 6 has held as under:

"6. As far as the legal issue is concerned, there can be no manner of doubt that grant of leave is a necessary prerequisite before a suit under Section 92, CPC can be entertained. This Court has held in a number of judgments that in an application filed under Section 92, CPC seeking leave to institute a suit, normally a notice should be issued to the other side before passing orders thereupon. However, that is not absolutely necessary and in an emergent situation, the Court can grant leave even without issuing notice to the other side but then the respondent has a right to file an

application for revocation of the leave granted. Reference in this behalf is made to R.M. Narayana Chettiar & Another.v. L. Lakshmanan Chettiar & Others. [1991) 1 SCC 48), Vidyodaya Trust v. Mohan Prasad R. & Ors. [(2008) 4 SCC 11.5]. In R.M. Narayana's case (supra), this Court held as follows:

"17. A plain reading of Section 92 of the Code indicates that leave of the court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule of caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave under Section 92 to institute a suit..."

The above said proposition clearly shows that unless leave is granted, the Court has no jurisdiction to entertain the suit. The Apex Court in the judgment cited supra has clearly held that Section 92 of CPC mandates that leave of the Court is a pre-condition or a condition precedent for institution of suit against a

public trust. It would be also useful for this Court to examine Section 26 of CPC, which reads as under:

"26. Institution of suits-1). Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

2). In every plaint, facts shall be proved by affidavit."

Sub-Section (1) of Section 26 mandates that every suit shall be instituted by a presentation of plaint or in such other manner as may be prescribed. Therefore, what emerges from the above said Section is that suit must commence with the presentation of plaint. A scheme suit under Section 92 of CPC cannot be entertained unless leave is granted. Mere presentation of plaint filed under Section 92 of CPC does not amount to initiation of proceedings. Under Section 92 mere presentation of plaint is not the test for due institution of suit unless conditions precedent in instituting a scheme suit are complied with before

presentation of the plaint. Therefore, in terms of Section 26 of CPC, it is only when a leave is granted, it can be treated as a duly instituted suit and it is only then, it is to be deemed that machinery is set in motion and proceedings are deemed to have been either instituted or initiated.

Therefore, a leave to sue under Section 92 of CPC can be granted by the Court on the *prima facie* satisfaction regarding the allegations made against the respondents either without giving notice to the respondents or after giving notice to the respondents and hearing them, there will be no properly instituted suit under law before formal leave is granted by the Court under Section 92 of the Code and no interlocutory orders in the proceedings can be passed by the Court before granting permission to institute the suit under Section 92(1) of the Code. The provisions of Section 92(1) read with Section 26

clearly mandates that there is no properly instituted suit unless leave is granted in a scheme suit filed under Section 92. Unlike a suit in a forma pauperis stands instituted on filing of an application under Order 33 Rule 3. The said analogy cannot be extended to the suits filed under Section 92 of CPC. Section 92 mandates that the person or persons filing a suit alleging breach of any express or constructive trust created for public purpose has to seek leave and it will be only after the leave is granted the Court gets jurisdiction to entertain interlocutory applications.

15(a) Therefore, in the present case on hand, the Court below had no jurisdiction to entertain an application seeking appointment of a receiver. Therefore, this Court is of the view that the general power under Section 94 of CPC cannot be invoked in derogation of or contrary to specific mandate contained in the Code itself. Hence, when there are

specific provisions contained in the Code regarding the matter under consideration, the general power as contained in either Section 151 or other provisions like Section 94 cannot be exercised. The expression, if it is so prescribed in Section 94 in itself would create a bar and therefore, the supplementary proceedings as provided under Section 94 of CPC cannot be entertained in a scheme suit unless leave is granted. The expression "if it is so prescribed" reveals the limitation and restrictions for exercise of such powers by the Court. Therefore, this Court is of the view that execution of power conferred under Section 94 has to be necessarily in relation to the subject matter of dispute or the property relating to the dispute in the matter. Certainly, such power cannot be exercised in a scheme suit when an application seeking leave is still pending for consideration. Therefore, the impugned order passed on I.A.No.II appointing a

receiver is one without jurisdiction and therefore, the impugned order being highly illegal is not at all sustainable. Accordingly, point No.2 is answered in affirmative.

16. For the foregoing conclusions, I pass the following:

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order dated 18.4.2022 passed in Misc.Case No.71/2020 by the Principal District and Sessions Judge, Mandya, is set aside.
- (iii) The Court below shall pass appropriate orders on I.A.No.I and thereafter proceed to examine the claim of plaintiffs in I.A.No.II.

Sd/-
JUDGE

*alb/-