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**(2014) 04 AHC CK 0226**

**Allahabad High Court**

**Case No:** Civil Misc. Writ Petition No. 6465 of 2013

Karunanadhi

APPELLANT

Vs

Gyan Prakash

RESPONDENT

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**Date of Decision:** April 24, 2014

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 92

**Citation:** (2014) 5 ADJ 467 : (2014) 104 ALR 640 : (2015) 1 AWC 496 : (2014) 124 RD 137

**Hon'ble Judges:** Pankaj Mithal, J

**Bench:** Single Bench

**Advocate:** Birendra Singh and A.K.S. Parihar, Advocate for the Appellant; Vishesh Kumar, Advocate for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Pankaj Mithal, J.

Heard Sri Birendra Singh, learned Counsel for the petitioners and Sri Vishesh Kumar, learned Counsel for the respondents No. 1, 2 and 3.

The affidavits exchanged between the parties have also been perused.

The writ petition is directed against the order dated 19.1.2013 passed by the Additional District and Sessions Judge in Misc. Case No. 14/70 of 2012 Gyan Prakash and others v. Karunanidhi and others. The Court of first instance by the said order granted permission to respondents No. 1, 2 and 3 to institute suit u/s 92, C.P.C. against the petitioners in respect of Salik Ram Trust.

2. The only submission made on behalf of the petitioners is that u/s 92, C.P.C. a suit only in respect of a public trust of a charitable or religious nature can be brought about with the leave of the Court. The trust in question is not a public trust and, therefore, the Court below has manifestly erred in passing the impugned order.

3. In support of his argument learned Counsel for the petitioners has relied upon the affidavit of respondent No. 1 a certified copy of which has been filed as Annexure - 7 to the petition. It is dated 19.1.2013 and is part of the record of the Court below.

4. The respondent No. 1 in the said affidavit has clearly stated that the aforesaid Salik Ram Trust is a private trust and that the general public has no concern with the same. The aforesaid trust was never a public trust. It has always been a private trust, the benefit of which goes to the family members of the decedents of late Salik Ram.

5. There is no denial to the filing of the said affidavit. The averments of the said affidavit are not stated to be false.

6. Sri Vishesh Kumar, learned Counsel for the respondents No. 1 to 3 has drawn the attention of the Court to the trust deed to show that it is not a private trust. It is not necessary to interpret the trust deed to ascertain the nature of the trust in view of the aforesaid clear and unequivocal admission of the respondents that the aforesaid trust is not a public trust but a private one.

7. The said admission has not been made under any misconception but is categorical on affidavit which has not been withdrawn. Thus the trust is admitted to be a private one and not a public trust.

Section 92, C.P.C. reads as under:

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) .....

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(g) .....

(2) .....

(3) .....

8. A plain and simple reading of the above provision reveals that the institution of a suit u/s 92, C.P.C. by two or more persons with the leave of the Court has to be in respect of the trust created for public purposes of a charitable or religious nature. Therefore, for bringing a suit u/s 92, C.P.C. the existence of a public trust is sine qua

non.

9. In other words, in order to apply section 92 the trust must be for public purposes either charitable or religious. It has no application where the trust is not for public purpose or is of a private nature.

10. In the instant case, as per admission of respondents No. 1 to 3 the trust in question is a private trust and, as such, is not amenable to section 92, C.P.C. Accordingly, no leave could have been granted for instituting the suit u/s 92, C.P.C. In view of the above, the leave granted by the Court below is patently without jurisdiction.

Accordingly, the order dated 19.1.2013 is quashed and the writ petition is allowed with no order as to costs.