

**(2005) 11 CAL CK 0029**

**Calcutta High Court**

**Case No:** APOT No"s. 33, 11 and 12 of 1998; GA No"s. 556 of 2000 and 3541 and 3542 of 2003

Syed Mehdi

APPELLANT

Vs

Md. Ali Jaffar and Others

RESPONDENT

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**Date of Decision:** Nov. 9, 2005

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 92, 92(1)

Citation: (2006) 3 CHN 132

Hon'ble Judges: Tapan Kumar Dutt, J; Asok Kumar Ganguly, J

Bench: Division Bench

Advocate: Pramatha Nath Chatterjee and K.K. Boral, for the Appellant; Anupam Chatterjee, Nadira Patherya, for the Respondent

Final Decision: Dismissed

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### **Judgement**

Asok Kumar Ganguly, J.

Both these appeals were filed against an order dated 17th December, 1997 passed by a learned Judge of the First Court. By the said order dated 17th December, 1997, the learned Judge was, inter alia, pleased to dismiss two petitions being G.A. No. 3079 of 1997 and G.A. No. 3732 of 1997 filed by the appellant praying for certain orders. Both the petitions were filed in connection with the Suit No. 2137 of 1965 which was heard and disposed of by a judgment and decree dated 12th June, 1967. It was a proceeding u/s 92 of the Civil Procedure Code.

2. The learned Judge of the First Court, however, was pleased to hold that the scheme which was framed in the suit of 1965 cannot remain under the supervision of the Court perpetually since the current events have no connection whatsoever with the plaint filed in the said suit. As such, the learned Judge was pleased to give liberty to the appellant to file, if so advised, a suit in connection with the grievances raised by him and the learned Judge was pleased to observe that all reliefs claimed

in the petition can be the subject-matter of such a suit. The learned Judge further held that the reliefs, if any, claimed in such a suit will not be barred by any clause contained in the scheme. The learned Judge was also pleased to hold that the merits of the grievances raised in the applications were not adjudicated by him.

3. A little background of this case is necessary for proper appreciation of the questions raised in this appeal. One Aga Karbalai Md., since deceased, and a member of Ashna Asari Sect of Shia Mohammedans created an Imambara and a trust estate of Lt. Aga Karbalai Md. In respect of his properties including the Imambara at 10, Portuguese Church Street, Calcutta for religious and charitable purposes and for the benefit of the members of the said Sect.

4. In view of differences and disputes amongst the successors of Aga Karbalai Mohammad a suit was instituted and a scheme was framed on 13th January, 1911. Since the disputes persisted, the first scheme was modified and the second scheme was brought into existence on 28th March, 1916. Thereafter came a third scheme which was framed by an order dated 21st August, 1944. That scheme was further modified by the judgment and decree passed on 12th June, 1967 in Suit No. 3127 of 1965.

5. The case of the appellant is that he is a tenant in 1976 in a part of Imambara property at Portuguese Church Street, Calcutta (hereinafter referred to as the said property). The further case is that one Md. Hussain Siraji was continuing as the Managing Mutwali of the trust property. The appellant urges that as Mohammad Hussain Siraji became old and could not properly discharge his duties of a Mutwali, the appellant was asked to assist him and he was appointed one of the Mutwalis along with Md. Hussain Siraji. The case of the appellant is that his appointment as Mutwali was approved by the Court by an order dated 27.11.1991 and since then he was continuing as Mutwali.

6. The appellant alleged that on 13th July, 1997 which was the last day of Muharram and he was preparing food for the devotees who were to come to the said Imambara he was attacked by some antisocials and as a result whereof he sustained injuries and was hospitalised and his residence at the said premises was looted by the hooligans. Thereafter, on 14th July, 1997 a resolution was passed by the Board of Trustees suspending him from acting as Mutwali and a notice was given to him to show cause. Alleging all these incidents, the appellant filed two applications before the Court.

7. In those two applications the appellant made a prayer for a declaration that the respondent Nos. 1 to 3 namely Mohammad Ali Zafar and Azad Ahmed had ceased to remain trustees of the Board of the said Imambara and the trust estate of Aga Karbalai Mohammad. The other prayer made was that the appellant should be put back to the possession of the residential accommodation provided to him in the Imambara premises and he should be put back to the possession of the Imambara

estate and office with the papers and documents. On the said application an ad interim order was passed by a learned Judge of this Court on 27.08.1987 whereby Mohammad Hussain Siraji was appointed the Managing Mutwali as nobody had any objection to his acting as Managing Mutwali. Ultimately the said application was rejected by an order of the learned Single Judge dated 17.12.1997. The second application which was filed by the appellant was for an order of cancellation of resolution dated 14th August, 1997 which was passed for suspending the appellant from acting as a Managing Mutwali

8. The learned Judge in support of his order gave two reasons. The first reason given was that the current realities have changed and the facts which was pleaded in the plaint in the 1965 and on which the decree was passed were different as such, in that changed background the applications cannot be entertained in the present suit. The other ground which was given by the learned Judge was that it was not possible for the Court to retain supervision over the trust property for an indefinite period of time.

9. Apart from the aforesaid two grounds which were weighed with the learned Judge this Court Finds that the prayers of the appellant in those applications were mainly for vindication of his individual rights namely recovering possession of the Imambara premises which he was treating as his residence. The second prayer was for setting aside the suspension order which was passed against him by the Board of Trustees.

10. This Court also finds that the prayers of the appellant, apart from being personal in nature, bristle with various factual controversies. Considering the nature of such controversies a Division Bench of this Court, at an interim stage by an order dated 18th January, 1998 directed that there may be trial on evidence when the appeal will be heard. But that was an interim order. The learned Counsel for the appellant very much referred to the same in order to contend that this Court should hold a trial on evidence in order to ascertain various contradictory statements made by the parties in this case. The reason why such a course is not taken by this Court will appear from the discussions below.

11. From the records it appears that about the incident which happened on 13th July, 1997, Azad Ahmed, one of the trustees on oath made a detail reference to the misdeeds of the appellants and supported his removal. This appears from the affidavit of the trustees filed in these proceedings. Reference may be made to paragraphs 8, 14, 17, 19 and 21 of the affidavit filed by Azad Ahmed. This affidavit was filed by Azad Ahmed in the First Court. But before the Appeal Court in the affidavit which has been filed by Azad Ahmed in March, 2000, he had taken a totally contrary stand. Mohamad Hussain Siraji, who is continuing as Mutwali, also affirmed an affidavit before the Trial Court and in the said affidavit in paragraphs 6, 8, 9 Mohammad Hussain Siraji has categorically stated that the appellant was his assistant and misbehaved seriously by indulging in various unlawful and illegal

activities with the women who were present at the Imambarah premises on 13.07.97 and therefore Mohammad Hussain Siraji supports the order of suspension which was issued in respect of the appellant. But in the appeal proceeding Siraji has come out with a completely different story in paragraph 9 of his affidavit.

12. It is therefore clear that the parties have taken contradictory stand. It also appears that the appellant in his first application filed before the learned Judge of the First Court (G.A. No. 3737 of 1997) sought for removal of Azad Ahmad. The said prayer of the appellant has not been given up till today. But before this Court the Counsel for Azad Ahmed supported the case of the appellant. From the aforesaid factual background it is clear that there are various disputes between the parties inter se and mostly at the personal level and there are allegations and counter-allegations of misbehaviour and misconduct against the appellant by the present Mutwali and also by the trustees.

13. The question which falls for consideration in this Court is whether in the background of such allegations and counter-allegations the prayers made in this application by the appellant should be granted in connection with the 1965 suit, which was filed for administration of the trust and framing of a scheme. It is not in dispute that the said was filed u/s 92 of the CPC as such, the said suit is representative in character. Though in the order which was passed in the said suit on 12th June, 1967 parties were given liberty to apply the question whether that liberty to apply can be pressed into service by the appellant in support of his prayers.

14. First of all, the appellant was not a party to the said proceeding. Apart from that in the present application the appellant is seeking to assert his individual right to the office of Mutwaliship and his personal possession of his residence which he was occupying within the Imambarah premises. A prayer has also been made for cancellation of the suspension order which was passed against him individually by the Board of Trustees.

15. The learned Counsel for the appellant submits that in view of the liberty to apply given by the Court no separate suit is required to file and in the 1965 suit the appellant can file these applications and the order of the learned Judge is erroneous. The learned Counsel for the appellant has cited some decisions in support of his contention.

16. This Court is unable to appreciate the contentions raised by the learned Counsel for the appellant. The learned Counsel for the appellant and also the learned Counsel for trustees who is supporting the appellant's case, has raised objection against the intervenors on the ground of their locus standi. It has been said that the present intervenors have been set up by one Abbas Rahim, after the application by Abbas Rahim for being added as a party, was rejected all throughout. Various factual allegations have been made.

17. The only prayer made in this intervention application by the applicants is just for a liberty to intervene in this proceeding in order to bring on record the relevant facts and circumstances. This Court, after hearing the Counsel for the parties and also looking at the changed stand of Azad Ahmed and Mohammad Hussain Siraji, has allowed the intervenors to intervene primarily for two reasons.

18. Both Azad Ahmed and Md. Hussain Siraji have completely altered their stand which was taken by them in the First Court. In fact, in this appeal both Azad Ahmed and Md. Hussain Siraji were supporting the case of the appellant after a complete volte face of their stand taken in the First Court.

19. Apart from that the only prayer which was made by the intervenors was for a liberty to place the relevant facts before the Court. This is a matter relating to Imambara and a trust which was created for charitable and religious purposes and for the benefit of the members of Ashna Asari Sect of Shia community. Therefore the matter has a public element. The Court therefore permitted the intervenors to intervene and to place on record the relevant facts.

20. The prime question which therefore falls for determination in this appeal is whether the prayers made in these two applications by the appellant can be considered within the scope of a suit filed u/s 92 of the CPC and whether despite the passing of a final decree in 1967 in the 1965 suit the prayers made by the appellant in 1997 should have been entertained by the learned Judge within the purview of that 1965 suit, a Section 92 proceeding.

21. Before answering the same question one has to consider the special features of a Section 92 suit. The subject-matter of a Section 92 suit must be one which is sufficiently representative of general interests. Grievances relating to a Section 92 suit can be brought by individuals but those grievances must have a public character. It must be shown that they have been brought for the benefit of the general public and for furthering the religious and charitable purposes for which the trust has been created. It may be necessary in view of the passage of time to modify the scheme for better management of the trust properties. If the aforesaid tests are satisfied in that case, though the suit has been decreed in the past, an application can be made for making necessary changes in the administration of the suit property or in the administration of the scheme which was framed by the Court. And in such a case a separate suit need not be filed. In this regard reliance was placed by the learned Counsel for the appellant on the decision of the Supreme Court in the case of [Raje Anandrao Vs. Shamrao and Others](#), . In that case the learned Judges discussed the leading case on the point in paragraphs 9 and 9a of the judgment. Thereafter in paragraph 10 of the judgment the learned Judges held that in Raje Anandrao, the Court was concerned only with the modifications of the scheme and not with the appointment, removal of trustees or other matters enumerated in Sub-section (1) of Section 92 of the CPC. In such a situation it appeared to the Court both appropriate and convenient that a scheme should contain a provision for its

modification since such a provision would enable a speedier remedy for modification when circumstances calls for it and this can be done without going through the cumbrous procedure of a suit.

22. In the instant case those principles cannot be applied. The prayer made in the applications of the appellant have been discussed above. It is clear that all the prayers arose out of individual grievances of the appellant. There are personal allegations against the appellant of misbehaviour with women devotees and leading to criminal proceedings and his arrest and subsequent grant of bail by Court. It was also a case of his removal from Mutwalliship and suspension from the said office. Therefore, the prayers in those applications were not for modification of any scheme. Thus the ratio of Raje Anandrao is not attracted in the present case and the learned Judge of the First Court was right that the grievances of the appellant can be subject-matter of a separate suit. Therefore, the decision in Raje Anandrao does not help the appellant.

23. A subsequent decision of the Supreme Court on which reliance was placed was rendered in the case of [Chairman Madappa Vs. M.N. Mahanthadevaru and Others](#), . In Madappa also it was held by the Supreme Court, relying on the ratio in Raje Anandrao, that Court has jurisdiction u/s 92 to give directions asked for under the scheme if those directions are in the nature of ordinary administration of the trust property. In the instant case, as noted above, the prayers made in the applications filed by the appellant were not in the nature of seeking directions for ordinary administration of the trust property. On the contrary, the prayers in those applications arose out of the personal rights, if any, of the appellant.

24. When prayers are made before a Court for enforcing private rights the same falls outside the scope of Section 92 suit. This has been made clear by the Supreme Court in [Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others](#), . In Biswanath (supra) the suit was for a declaration by the plaintiff for his title and possession and the Supreme Court held in paragraph 7 at page 1046 of the report "the suit also is for a declaration of the plaintiff for his title and possession and therefore is not a suit for one of the reliefs mentioned in Section 92 of the Code of Civil Procedure". In the earlier part of paragraph 7, the Apex Court made it clear that a suit for declaration of title to the property and for possession of the same from the defendant who is in possession thereof is not for one of the reliefs within the meaning of Section 92 of the Civil Procedure Code, on the other hand such a suit is for the enforcement of private rights. Here also the claim of the appellant is for recovery of possession of his residential premises within the Imambara. Such a prayer is not within the scope of Section 92 and cannot be considered by the Court on the basis of an application filed in a Section 92 suit which was decreed 30 years ago. The learned Judge is therefore right in his conclusion that in order to vindicate the aforesaid grievances, the appellant may file a separate suit, if so advised. The same principle has been repeated in the case of [Swami Paramatmanand Saraswati](#)

[and Another Vs. Ramji Tripathi and Another,](#) . In paragraph 10 of the judgment the learned Judges explained the special nature of a suit u/s 92 and the learned Judges held that where grievances are not for vindicating any right of the public but the grievances are made for seeking a declaration for individual or personal right or the individual or personal right of any other person or persons in whom the plaintiffs are interested, then the suit would be outside the scope of Section 92. The learned Judges made it further clear by saying that a suit whose primary object is to remedy the infringement of an individual right or to vindicate private right, such a suit does not fall u/s 92. It has been specifically made out that when the right to the office of the trustee is asserted or denied and the relief is asked for on that basis, the suit falls outside Section 92.

25. Applying the aforesaid tests in the facts of this case it is clear that in this case the grievances of the appellant in those applications are absolutely personal in nature namely his right to Mutwalliship, his right to recover possession of the residential premises from which he has been allegedly dispossessed and also his grievances against an order of suspension passed against him. All these are admittedly personal rights and fall outside the purview of a Section 92 suit. Therefore, on the basis of those rights no application can be made in a Section 92 suit which was filed in 1965 and decreed in 1967. The learned Judge of the First Court is therefore right in his conclusion and we affirm the same, though on slightly different reasons. We, therefore, do not find any merit in both these appeals and which are accordingly dismissed.

26. There will be, however, no order as to costs.

27. Urgent xerox certified copy of this judgment if applied for, may be given to the parties as early as possible after completing all the formalities.

Tapan Kumar Dutt, J.

I agree.

Later:

28. Prayer for stay is considered and rejected.