B.S. Adityan and ors. Vs. R. Kannan Adityan and anr.

LegalCrystal Citation : legalcrystal.com/804520

Court : Chennai

Decided On : Oct-08-1982

Reported in : AIR1983Mad334; (1983)2MLJ32

Judge : K.B.N. Singh, C.J. and ;Padmanabhan, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 92 and 141 - Order 11, Rule 15 and 18; Madras High Court (Original Side) Rules - Order 1, Rule 4(12)

Appeal No. : O.S.A. No. 160 of 1980

Appellant : B.S. Adityan and ors.

Respondent : R. Kannan Adityan and anr.

Advocate for Def. : U.N.R. Rao for S. Ramalingam, K. Alagirisamy and N. Thiagarajan, Advs.

Advocate for Pet/Ap. : G. Vasantha Pai for V. Shanmugham, Riaz Ali Khan and D. T. Sethumadhavan, Advs.

Judgement :

Padmanabhan, J.

1. This O.S. Appeal has been filed against the order passed by a learned single Judge of this Court on 2nd Sept., 1982 in Appln. No. 3124 of 1982 in Appln. No. 165 of 1981.

2. The facts leading to the filing of Application No. 3124 of 1982 may be briefly stated as follows. The late S. B. Adityan created a trust called the 'Thanthi Trust' on 1-3-1954. While creating the trust he appointed besides himself, his elder brother S. T. Aditayan and his elder son B. R. Adityan as trustees. On 19-5-1959 B. R. Adityan resigned. The respondents herein Kannan Adityan and Kathiresan Aditayan are the sons of the said B. R. Adityan. On 22-5-1959 the founder appointed his another son B. S. Aditayn the first appellant herein and also the Educational Trustee Co. (P) Ltd., as trustees. B. S. Adityan was appointed as Director-Trustee. On 8-11-1961 the founder S. B. Aditayan resigned. On 27-12-1963 S. T. Adityan the elder brother of the founder also resigned from the trusteeship. On 20-6-1978, the founder appointed again his elder son B.R. Adityan who has resigned in 1959, as additional trustee. On 30-6-1978 the founder appointed himself as additional trustee. On 1-7-1978 the founder appointed his elder brother S. T. Adityan again as additional trustee. ON 16-9-1978 S. B. Adityan the founder, his elder brother S.T. Adityan and the founder's elder son B.R. Adityan resigned from the trusteeship. It may be mentioned that before the

resignation of S. B. Adityan, S. T. Adityan, and B.R. Adityan there were certain proceedings initiated by the parties on the Original side of the High Court, only by the Appellant herein challenging the appointment of additional trustees by the founder and the other by S. T. Adityan and B. R. Adityan for removing the appellant from the trusteeship. In view of the resignations of the three persons, the proceedings came to a close.

3. The respondents herein who are the sons of B.R. Adityan the elder son of the founder, filed Appln. No. 165 of 1981, under Section 92, C. P. C. to file a suit against the appellants. The relief asked for in the plaint is for a decree appointing the respondents as additional trustees and directing the appellants 1 and 2 to render a true and faithful account of their administration of the trust from the dates of the assumption of charge as trustees. Along with the Appln. No. 165 of 1981, the respondents filed a copy of the plaint to which was annexed a list of documents relied on by them. The first appellant filed a detailed counter-affidavit. One of the main contentions urged by the appellants is that the application to file a suit under Section 92, C. P. C. is unsustainable since the respondents are not persons interested in the trust within the meaning of S. 92, C. P. C. and the proposed suit is essentially for vindication of their personal rights and that the prayer for the other relief is only a camouflage to bring the suit within S. 92, C. P.C. It is also contented that the suit is not filed in a representative character. It is unnecessary to refer in detail to the other contentions raised in the counter-affidavit except to state that in para11 of the counter-affidavit it is averred that the respondents are students and are living with their parents under their care and protection at No. 2, Third Crescent Park, Madras 20. The first respondent is said to be just 20 years' old and second respondent is about 18 years old and that the application under S. 92, C. P. C. has been filed by the father and the respondents have been used as mere name lenders. It is further made clear in para 34 that the respondents are not persons interested in the public trust and thier alleged interest in illusory and if all they claim any interest in the trust, it is only to bolster up their private interests and the personal interest of thier father.

4. The appellants then filed Appln.No. 879 of 1981 under O. 15 R. 1 of the Orignal side Ruled, read with O.19, R.2 and section 151, C. P.C. for an order summoning the respondents to be cross-examined on the allegations made by them in their affidavit filed in support of their Appln. No. 165 of 1981. That was opposed by the respondents. Shanmukham, J. by his order dated 21-9-1981 found that there was no valid justification to entertain the application and accordingly dismisssed the same. Against the said order, the appellants preferred O. S. A. No. 152 of 1981 (B. S. Adityan v. R. Kannan Adityan). A Bench of this Court allowed the appeal and permitted the appellants to corss-examine the respondents with regard to matters stated in the application. The respondents filed S. L. P. No. 6040 of 1982 (R. Kannan Aditayan v. B. S. Adityan) in the Supreme COurt against the judgment of this Court on O. S. A. 152 of 1981. The Supreme Court dismissed the petition with the observation :- 'The cross-examination however will be confined only to the quesiton of snction and principles governing the same.' The Supreme Court further directed that as far as practicable, this Court should decide the question of sanction within two months from the date of the order. The application stood posted for hearing in 20-8-1982. It may be stated at this juncture that the respondents had served on the appellants copies of the documents mentioned in the list of documents annexed to the plaint. On 24-8-1982, the counsel for the appellants wrote to the counsel for the respondents requesting him to give inspection of the certified copies of the documents, referred to in the list of documents in the proposed plaint, in Court on 25-

8-1982. That letter is marked in these proceedings as Exhibit P1. On 25-8-1982 the respondents counseln send a reply to the appellants counsel stating that no reference has been made to any certified copy of a document in the list of documents annexed to the plaint and asked for clarification thereof. That letter is marked as Ext. R1. On 26-8-1982, the appellants counsel again wrote to the respondents counsel under Ext. P.2, clarifying that he wanted to inspect all documents referred to in the plaint. That was replied to by the counsel for the respondents by his letter dated 30-8-1982, marked as Ext R.2, stating that the request for inspection of documents would not be complied with at that stage. Thereupon, the appellants filed Appln. No. 3124 of 1982 to direct the respondents to file the original or certified copies of the documents be given to them prior to the cross-examination of the respondents. The was objected to by the respondents. On 2-9-1982, Swamikkannu, J. dismissed the application. Hence this O. S. Appeal.

5. In Appln. No. 3124 of 1982, the appellants have invoked the following provisions, viz., O, 16, R. 8, O. S. Rules read with O. 3, R. 1; O. V, R. 1; O. 9, R. 5 of O. S. Rules and O. 11, R. 18 and S. 151, C. P. C. In the affidavit filed in support of Appln No. 3124 of 1982, it is stated by the appellants that while dismissing S. L. P. No. 6040 of 1982, the Supreme Court directed that the cross-examination shall be confined to the question of sanction and principles governing the same. It is further stated that the inspection of the documents is very vital for the effective cross-examination of the respondents as the answer to the questions pertaining to these documents will have ample bearing in the application of the principles of sanction and the sanction now sought.

6. The ground on which the learned Judge dismissed the application is that the suit has not been instituted and that only a copy of the proposed plaint has been filed along with Appln. No. 165 of 1981. O. 11, C. P. C. will be application only to the parties to the suit which is duly instituted and therefore the provisions of O. 11, C. P. C. are not applicable to the facts of this case.

7. Mr. U. N. R. Rao, appearing for the respondents, raised a preliminary objection that the order passed by the learned single Judge dismissing Appln. No. 3124 of 1982, is not a `judgment' within the meaning of CI, 15 of the Letters Patent and consequently the appeal itself is not maintainable.

8. Mr. G. Vasantha Pai, the learned counsel for the appellants, contended that there was no merit in the preliminary objection raised by the learned counsel for the respondents. In the submission of Mr. Vasantha Pai, the order passed by the learned single Judge effectively affected the rights of cross-examination granted to the appellants and that it caused great injustice to the appellants as it really and effectively took away the right of the appellants to contest the application filed by the respondents for leave to sue under S. 92, C. P. C. The order passed by the learned single Judge has all the trappings of finality in relation to a part of the proceedings and therefore fell within the meaning of `judgment' in CI, 15 of the Letters Patent.

9. On the merits, the contentions of Mr. Vasantha Pai may be summarised as follows: Before sanction could be granted to a party to file a suit under S. 92. C. P. C. the ingredients of Section 92, C. P. C. are present. Section 92, C. P. C. requires that before a suit is filed for any of the reliefs mentioned therein, it must be shown that the trust is a public trust, that the proposed plaintiffs have a real interest in the suit trust, that the suit is filed in public interest and not to vindicate the personal rights of the

proposed plaintiffs and that it is being filled in a representative capacity. The question whether leave can be granted or not can be decided by the Court only with reference to the averments in the plaint. In view of the stand taken by the appellant that the respondents have been set up by their father to file the application under S. 92, C. P. C., it would be necessary for him to have the documents produced for inspection to show that these documents have been handed over to the respondents by their father for the purpose of filing the application for sanction and the respondents have no knowledge whatever of the affairs of the trust. Mr. Vasantha Pai also relied on Sec. 141. C. P. C. and stated that O. 11, C. P. C. would be attracted even to an application under S. 92, C. P. C.

10. Mr. U. N. R. Rao, the learned counsel for the respondents urged, in reply to Mr. Vasantha Pai, that the prayer in the application filed by the appellants for permission to cross-examine the respondents on the affidavit filed by them. Consequently, the appellants cannot cross-examine the respondents with reference to any allegations in the plaint and therefore no inspection of the documents covered by the list annexed to the plaint can be granted at this stage. (2) The provisions of law relied upon in Appln, No. 3124 of 1982 are applicable only to a suit and a party to the suit. Here in as much as the suit is only at the stage of contemplation and depended on sanction being accorded by Court. O. 11, C. P. C. would not be attracted. The respondents have not filled the original plaint in Court and have only filed a copy of the plaint as required by O. 3. R. 1. O. S. Rules. The affidavit filed in support of the application for sanction under Sec, 92. C. P. C. does not constitute pleadings. Further, S. 141, Civil P. C. does not apply to proceedings under Section 92. C. P. C. because in the submission of the learned counsel it does not apply to applications under the Civil P. C. The learned counsel also stated that in any event the documents mentioned in the plaint are all public documents within the meaning of S. 74(2) of the Evidence Act. It will be open to the appellants to take certified copies of the same and make use of them if they so desire.

11. The following two questions arise for consideration in this appeal: (1) Is the appeal maintainable under CI. 15 of the Letters Patent? (2) whether the appellants are entitled to inspection of the documents included in the list appended to the plaint?

12. Under C1. 15 of the Letters Patent, an appeal lies to a Division Court from a judgment of one Judge of the High Court. The contention of Mr. U.N.R.Roa is that the order passed by the learned single Judge is not a judgement within the meaning of C1. 15 of the Letters Patent. In this context the learned counsel relied upon the decision of the Bombay High Court in Ahmed v. Ayeshabai, (1909) 2 Ind Cas 167. In an administration suit, pending before a Judge in Chambers, defendants 3 and 4 applied that the Receiver appointed by the Court be directed to give them free and full inspection of all papers, documents, vouchers, letters and account books of the deceased in his possession. It was objected to by some of the documents were privileged or irrelevant and an inspection might be allowed only of the documents which were declared relevant on affidavit. The learned single Judge found that defendants 3 and 4 were entitled to inspection of all the documents which the Court had taken possession of by means of a Receiver. Against the said decision, the plaintiff perferred an appeal under CI. 15 of the Letters patent which was dismissed by the learned Judges on the ground that no appeal lies. There is no discussion in the judgement as to the circumstances under which the order passed by the single Judge could be considered to be a judgment within the meaning of CI. 15 or the Letters

Patent. Apart from that the factual situation in that case was entirely different from what it is in the present case. We are therefore of the view that the said decision is of no help to the learned counsel for the respondents.

13. The question as regards the scope and ambit of the word `judgment' in CI 15 of the Letters Patent came up for consideration before the Supreme Court in shah Babulal Khimji v. Jayaben D. Kanai, : [1982]1SCR187 . The question that arose for consideration before the Supreme Court was whether an appeal would lie against an order passed by a single Judge on the Original side dismissing an application for appointment of a Receiver as also for an interim injunction. Fazal Ali, J. speaking for Varadarajan, J. and himself observed as follows:-

'The intention of the givers of the Letters Patent was that the word `judgment' should receive a much wider and more liberal interpretation than the word `judgment' used in the Civil P. C. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems that the word `judgment' has undoubtedly a concept of finality other words, a judgement can be of three kinds : (1) A final judgment, (2) A preliminary judgment and (3) Intermediary or interlocutory judgment. Intermediary or interlocutory judment. Most of the interlocutory orders which contain the quality of finality are clearly specified in CIs. (a) to (w) of O. 43, R. 1 and have already been held by us to be judgments within the meaning of the Letters Patent and therefore appealable. There may also be interlocutory orders which are not covered by O. 43, R. 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote.'

The learned Judges gave various instances and also took care to point out that the instances given were illustrative and not exhaustive. Among others, tests laid down by Sir white, C. J. in T. V. Tuljaram Rao v. M. K. R. V. Alagappa Chettiar. ILR (1912) Mad 1, viz., that the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings, Sen J. observed thus:

'What kind of an order will constitute a judgment within the meaning of CI. 15 depends on the facts and circumstances of each case and on the nature and character of the order passed..... In my opinion, an exhaustive or a comprehensive definition of judgment as contemplated in CI, 15 of the Letters Patent cannot be properly given and it will be wise to remember that in the Letters Patent itself, there is no definition of the word `judgment'. The expression has necessarily to be construed and interpreted in each particular case. It is, however, safe to say that if any order has the effect of finally determining any controversy forming the subject matter of the suit itself or any part thereof or the same affects the question of Court's jurisdiction or the question of limitation, such an order will normally constitute a judgment within the meaning of Cl.15 of the Letters Patent. I must not, however, be understood to say that any other kind of order may not become judgment within the meaning of Clause 15 of the Letters Patent to be appealable under the provisions thereof.'

14. Applying the tests laid down by the Supreme Court in the above decision, we are

of the view that the present appeal is maintainable. The respondents have filed an application for sanction to institute a suit under Section 92, C. P. C. which is being opposed by the appellants. The question whether the leave to institute a suit, prayed for by the respondents, can be granted will have to be decided on the application of the principles governing sanction. The appellants have been given the permission to cross-examine the respondents. The Supreme Court in its order dismissing S. L. P. 6040 of 1982, observed that the cross-examination will be confined to the question of sanction and principles governing the same. The appellants have taken the stand that the respondents have no interest of their own in the Thanthi Trust, that they are not suing in a representative capacity and that they are mere tools in the hands of their father, B. R. Adityan. To establish this contention, the appellants require the inspection of the documents listed in the copy of the plaint filed by the respondents in order to effectively cross-examine the respondents. When the appellants have been given the permission to cross-examine the respondents it will be certainly open to them to insist on the production of such documents as are necessary for an adjudication of the issue before the Court. The aim of Section. 92, C. P. C. is intended to provide proceedings of a special nature for the purpose of determining questions that relate to the administration of public, religious or charitable trusts and to prevent multifarious and vexatious suits being filed by irresponsible persons against the trustees whose duty is to administer the trusts. The suit must be fundamentally on behalf of the public for the vindication of a public right and infringement of public rights is outside the scope of the section. It is precisely because of this the section provides that a suit can be instituted only with the leave of the Court. The very object of giving the right of cross-examination to the appellants is to enable the appellants to justify their case that no leave can be granted to the respondents on the basis of the established principles governing sanction to institute the suit under Section 92, C. P. C. To effectively defend the application under Section 92 C. P. C. and also to effectively make use of the oppurtunity given to them for cross-examinations of the respondents, the appellants are entitled to inspect the documents, that are necessary for them to establish their contention that the respondents are only tools in the hands of their father, that the father is really behind the institution of the application for leave under Section 92, C. P. C. and that the respondents neither represent the public nor have any interest in the trust. Inasmuch as the order appealed against has negatived the request of the appellants for permission to inspect the documents relied upon by the plaintiffs, it must be deemed to have a direct and immediate adverse effect on the appellants. The order appealed against has not only the effect of adversely affecting the valuable right granted to the appellants to effectively cross-examine the respondents, but also causes grave injustice to them, for their case is that if these documents are allowed to be inspected they will be able to establish that these documents have been handed over to the respondents only by their father and that the respondents could not have had any direct knowledge or information about the Thanthi Trust. We are therefore of the view that the order appealed against possesses the characteristics and trappings of finality and decides and important aspect of the proceedings initiated by the respondents under Section 92, C. P. C. We have already extracted the tests laid down by this Court in T. V. Tuljaram Rao v. M. K. R. V. Alagappa Chettiar, ILR (1912) Mad 1 and approved by the Supreme Court in Shah Babulal Khimji v. Jayaben D. Kania, : [1982]1SCR187 viz., that the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings. Mr. U. N. R. Rao drew our attention to the first of the tests laid down by this Court in T. V. Tuljaram Rao v. M. K. R. V. Alagappa Chettiar, (1912) 35 Mad 1, and extracted in the decision of the Supreme

Court in Shah Babulal Khimji v. Jayaben D. Kania, : [1982]1SCR187 viz., the Courts must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex facie legally erroneous or causes grave and substantial injustice. We are of the view that in this case, the denial of the oppurtunity to the appellants to have inspection of the documents in the list attached to the plaint would cause grave and substantial injustice to them. In this view, we are of the view that the order of the learned Judge is a judgment within the meaning of Clause 15 of the Letters Patent and that the appeal is maintainable. We overrule the preliminary objection.

15. The main thrust of the arguments of Mr. U. N. R. Rao is that no suit as such has been instituted against the appellants by the respondents, that O. 11, R. 14, C. P. C. will apply only to suits and parties thereto, and that therefore the appellants will not be entitled to demand inspection of the documents before leave is granted under Sec. 92, C. P. C. and the suit is formally instituted. We are unable to accept the contention of the learned counsel for the respondents. Section 92, C. P. C. states that 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 situated to obtain a decree for any of the reliefs mentioned in Clauses (a) to (m). Order III, Rule 1 of the Original Side Rules enjoins that an application for leave to institute a suit should be accompanied by the plaint in the intended suit, or a copy thereof. Now the scheme of Section 92, C. P. C. is that the suit must be filed in conformity with the provisions of Section 92, C. P. C. in other words, the Court has to satisfy itself whether the persons asking leave have interest in the trust, whether the trust is a public trust and whether there are prima facie grounds for thinking that there is a breach of the trust and whether the reliefs prayed for in the plaint fall within the reliefs mentioned in the Clause (a) to (h) of Section 92, C. P. C. Viewed in this light, the plaint necessarily forms part of the application for leave to file a suit under Section 92, C. P. C. It may also be stated as has been rightly pointed out by Mr. Vasantha Pai that once leave has been granted by the Court, it will not be possible for the persons who have obtained leave either to alter the names of the parties suing or substantially change the character of the suit or enlarge the scope of the suit without the sanction of the Court. The suit, must, therefore, in our opinion, be deemed to have commenced with the filing of the application for leave under Section 92, Civil P. C. Consequently, the provisions of the Original Side Rules or the Civil P. C. relevant to the production and inspection of documents will be attracted to the proceedings.

16. Order I, Rule 3 of the Original Side Rules states that except to the extent specifically provided for by the rules, the provisions of the Code shall apply to all proceedings. It further states that the rules and forms mentioned in Appendix III thereto and all previous rules and forms and the provisions of the Code, so far as such provisions are inconsistent with the rules and forms, are repealed and superseded and the rules, orders and forms mentioned therein shall stand in lieu thereof. Order I, Rule 4 (12) defines a pleading as including a plaint, written statement, reply statement, petition, special case, memorandum of appeal and memorandum of objections. Order II Rule 1 states that a suit shall be commenced by presenting a plaint to the Court or such Officer as the Chief Justice appoints in this behalf; all other proceedings shall be commenced by petition unless otherwise provided for by these rules framed under any special Act. Order III, Rule 1 states that an application

for leave to institute a suit in the Court shall be made by Judges summons entitled in the matter of the intended suit, and shall be supported by an affidavit stating the residence and occupation of the defendant, and the reason for instituting the suit in the Court. The application shall be accompanied by the plaint in the intended suit, or a copy thereof. Order IV, Rule 1 states- 'A suit shall be instituted by presenting to the Registrar a plaint in form No. 5 of Appendix II hereto containing the particulars prescribed by the Code.' Statements of accounts and any documents relied upon by the plaintiff, shall not be set out in the body of the plaint, but shall be shortly referred to. The plaint shall, at the foot thereof, contain a list to be signed by the plaintiff or his advocate, of the documents filed therewith, in form No.II or a statement signed as aforesaid, that no document is filed therewith. It shall not be necessary to file the list of documents mentioned in Order VII, Rule 14(2) of the Code.'

17. Order 7, Rule 14, C. P. C. states as follows-

1. Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

2. Where he relies on any other document (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.'

18. Order 7, Rule 14 refers to two kinds of documents, viz., (1) those on which, the plaintiffs filed the suit, and (2) those which the plaintiffs rely upon as evidence in support of their claim. In the former case, they are enjoined to produce the document along with the plaint and in the latter case they are to enter the documents in a list to be added or annexed to the plaint.

19. Order 11, Rule 15, C. P. C. states as follows-

'Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, or who has entered any document in any list annexed to his pleadings, to produce such documents for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.'

20. In Order 11, Rule 15, C. P. C. the words 'or who has entered any document in any list annexed to his pleadings' were introduced by the Amending Act 104 of 1976.

21. Order 11, Rule 18, C. P. C. reads as follows-

'1. Where the party served with notice under Rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit.'

Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

2. Any applications to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party, against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.'

22. The necessity for amendment of O.11, Rule 15, C. P. C. arose because of a conflict of opinion among various High Courts on the question whether a list of documents appended to the plaint formed part of the pleadings. In Ramanthan v. Annamalai AIR 1931 Mad 825 the question arose whether the expression 'referred to' in O. 11 R. 15, C. P. C. as it originally stood was equivalent to 'entered in the list appended to the plaint' and also whether inspection of documents could be granted even before the written statement was filed. Curgenven, J. held thus-

'The only reasonable way of reading O. 7, Rule 14 with O. 11, R. 15 is to hold that the expression 'referred to' is equivalent to 'entered in the lis'. It seems to me that for this purpose the list must be deemed to be part of the plaint as for instance would be a schedule of property. It is to be noted that Rule 14, Order 7 is headed 'documents relied on in plaint', which goes in support of this view.'

23. As regards the contention that was raised before the learned Judge that O. 11, R. 18 invested the Court with the discretion to grant or refuse request for inspection of documents and that it would be unfair to the plaintiff to allow inspection of his documents before the defendants filed their written statement, the learned Judge observed as follows-

'My conclusion is that while the Court has a certain discretion, limited to the terms of the proviso to Order 11, Rule 18 (1) it would not be a proper exercise of that discretion to refuse inspection on the general ground that it was sought before the written statement was filed.'

In view of the above decision it has to be held that O. 11, R. 15, C. P. C. and O. 11, R. 18, C. P. C. are attracted to the case.

24. It may be recalled that prior to the amendment in 1976, there was a difference of opinion whether the Court could order inspection of documents entered in any list annexed to the pleadings. As already stated, Curgenven, J. in Ramanathan v. Annamalai, AIR 1931 Mad 825 took the view that the list must be deemed to be part of the plaint. Now this controversy has been set at rest by the amendment of O. 11, Rule 15, C. P. C. which now enables every party to a suit to give notice to any other party, who has entered any document in any list annexed to his pleadings, to produce such documents for the inspection of the party giving such notice, or his pleader and to permit him or them to take copies thereof.

25. Even assuming that it is not a commencement of a suit, an application filed by a

party for leave to sue under Section 92, C. P. C. can be said to be a civil proceeding and the procedure provided in the Civil P. C. in regard to suits shall be followed in so far as it can be made applicable to such proceedings. Section 141, C. P. C. reads as follows-

'The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation: In this section, the expression 'proceedings' includes proceedings under O. IX but does not include any proceeding under Art. 226 of the Constitution.'

So long as a proceeding is a proceeding in a Court of civil jurisdiction, Section 141, C. P. C. enjoins that the procedure provided in the Code in respect of the suits shall be followed in so far as it can be made applicable. Mr. U. N. R. Rao, went to the extent of arguing that Section 141, C. P. C. will not apply to any application filed under the provisions of the Civil Procedure Code, and, therefore, cannot apply to an application filed under Section 92, C. P. C. for leave to file a suit. We are unable to agree with the submission of the learned counsel. Our conclusion is fortified by the Explanation which explains that the expression 'proceedings' includes proceedings under Order 9, but does not include any proceeding under Article 226 of the Constitution of India. We are of the view that Section 141, C. P. C. applies to all proceedings filed under the Civil P. C. also.

26. In Ram Chandra v. State of U. P., : 1966CriLJ1514 the question arose whether provisions of the Civil P. C. would apply generally to a proceeding before a Civil Court arising out of a reference to it by a Magistrate under Section 146(1), Criminal P. C. The Supreme Court answered the question in the affirmative. It was argued before the Supreme Court that a proceeding upon a reference under S. 146(1), Cr. P. C. entertained by a civil court not being a original proceeding the provisions of Section 141, C. P. C. were not attracted and therefore those provisions of the Civil P. C. which related to a suit were not applicable to a proceeding entertained by a Civil Court upon a reference to it under Section 146(1), Cr. P. C. Referring to its decision in Munshiram v. Banwarilal, : AIR1962SC903 the Supreme Court observed as follows (at p. 1891)-

'Similarly recently this Court has held in Munishram v. Banwarilal, : AIR1962SC903 , that under Section 41 of the Arbitration Act and also under Section 141, C. P. C. it was competent to the Court before which an award made by an arbitration Tribunal is filed for passing a decree in terms thereof to permit parties to compromise their dispute under Order XXIII, Rule 3, C. P. C. Though there is no discussion, this Court has acted upon the view that the expression 'civil proceeding' in Section 141 is not necessarily confined to an original proceeding like a suit or an application for appointment of a guardian etc., but that it applied also to a proceeding which is not an original application. Thus, though we say that it is not necessary to consider in this case whether the proceeding before the Civil Court is a civil proceeding as contemplated by Section 141 or not there is good authority for saying that it is a vigil proceeding.'

27. Whatever doubt there might have been prior to the above decision, it is now settled by the above decision that the words 'civil proceedings' in Section 141 are not necessarily confined to an original proceeding like a suit or application for appointment of guardian etc. But applies to all proceedings which are not original

proceedings.

28. In M. L. Sethi v. R. P. Kapur, : [1973]1SCR697 the Supreme Court was called upon to consider the question whether the provisions of Order 11, Rule 12 regarding discovery of documents would be applicable to proceedings under Order 33. The Supreme Court held that the provisions of O. 11, R. 12 would be applicable. Following its own decision in Vijay Pratap Singh v. Dukh Haran Nath Singh . : AIR1962SC941 , the Supreme Court took the view that the suit would commence from the moment an application for permission to sue in forma pauperis as required by Order 33 was presented and therefore the provision of Rule 12 of Order 11 relating to discovery would in terms apply to proceedings under Order 33. With reference to the English law, on the subject the Supreme Court observed as follows-

'In England, discovery is ordered in any 'cause' or 'matter' in the Supreme Court to which the rules of the Supreme Court apply. And 'cause' includes any action, suit or other original proceedings between a plaintiff and a defendant. Generally speaking discovery is granted there in all proceedings except purely criminal proceedings, and civil proceedings where the action is brought merely to establish a forfeiture or enforce a penalty, Halsbury Laws of England Volume 12, page 2. There is no reason to hold, if costs could be saved, that it is not salutary to resort to the procedure in proceedings under O. 33.'

With regard to the contention that the application for discovery did not specify the documents sought to be discovered, the Supreme Court observed as follows:-

'We think that the High Court was wrong in holding that since the application for discovery did not specify the documents sought to be discovered, the lower Court acted illegally in the exercise of its jurisdiction in ordering discovery. Generally speaking, a party is entitled to inspection of all documents which do not themselves constitute exclusively the other party's evidence of his case or title. If a party wants inspection of documents in the possession of the opposite party, he cannot inspect them unless the other party produces them. The party wanting inspection must, therefore, call upon the opposite party to produce the document. And how can a party do this unless he knows what documents are in the possession or power of the opposite party? In other words, unless the party seeking discovery knows what are the documents in the possession or custody of the opposite party which would throw light upon the question in controversy, how is it possible for him to ask for discovery of specific documents.'

Then, after referring to O. 11, R. 12, Civil P. C., the Supreme Court again stated thus-

'When the Court makes an order for discovery under the rule, the opposite party is bound to make an affidavit of documents and if he fails to do so, he will be subject to the penalties specified in Rule 21 of Order 11. An affidavit of documents which are, or have been in his possession or power relating to the matter in question in the proceedings. And as to the documents which are not, but have been in his possession of power he must state what has become of them and in whose possession they are , in order that the opposite party may be enabled to get production from the persons who have possession of them(see form No. 5, Appendix C of the Civil P. C). After he has disclosed the documents by the affidavit, he may be required to produce for inspection such of the documents as he is in possession of and as are relevant.....Nor do we think that the High Court was right in holding that the

documents ordered to be discovered were not relevant to the inquiry. The documents sought to be discovered need not be admissible in evidence in the inquiry or proceedings. It is sufficient if the documents would be relevant for the purpose of throwing light on the matter in controversy. Every document which will throw any light on the case is a document relating to a matter in dispute in the proceedings, though it might not be admissible in evidence. In other words, a document might be inadmissible in evidence, yet it may contain information which may either directly or indirectly enable the party seeking discovery either to advance his case or damage the adversary's case or which may lead to a trial of enquiry which may have either of these two consequences. The word 'document' in this context includes anything that is written or printed, no matter what the material may be upon which the writing or printed is inserted or imprinted. We think that the documents of which the discovery was sought, would throw light on the means of the respondents to pay court-fee and hence relevant.'

29. In our opinion, this decision has gone to the extent of saying that in a proceeding under Order 33, C. P. C., the provisions of O. 11, C. P. C. would be applicable. If the provisions of O.11, C. P. C. are applicable it will be open to the Court to order discovery of documents in the possession of the opposite party even if the party seeking discovery does not specify the nature of the document. Discovery can be ordered in respect of documents which are inadmissible in evidence provided that they are relevant. An attempt was made to distinguish this case on the ground that the decision related to O.33, C. P. C. and that under O. 33, C. P. C., the suit must be deemed to have commenced. We have already expressed our view that even in a proceeding under Section 92, Civil P. C. the suit must be deemed to have commenced with the filing of the application. Even otherwise, we have also held that an application under Section 92, C. P. C., will be a proceeding within the meaning of Section 141, C. P.C. and that therefore the provisions of O. 11, C. P. C. would be attracted. We are therefore of the view that the appellants would be entitled to have inspection of the documents as required by them.

30. The only other argument that was advanced by Mr. U. N. R. Rao was that a pleading would exclude an affidavit. There is no merit in this contention. The definition of pleading according to the Original Side Rules would take in affidavits also.

31. Apart from the above and application under Section 92, C. P. C. must be accompanied by a plaint or a copy of the plaint. There is no substance in the contention of Mr. U. N. R. Rao that in this case only a copy of the plaint has been filed. Without a plaint, or its copy the Court cannot consider the question whether leave can be granted or not in accordance with the principles governing the sanction. The question whether leave has to be granted or refused can only be decided on a reference to the allegations in the plaint. In the circumstances, the plaint must be deemed to be part of the very application filed for sanction.

32. There is equally no merit in the contention of Mr. U. N. R. Rao, that the request of the appellants was only to cross examine the respondents on the affidavit. The substance of the application for cross-examination as well as the ultimate order by the Supreme Court is to enable the appellants to prove their case, if they are so able to prove that the application is not liable to be granted as it cannot stand the test of the principles governing sanction.

33. Apart from this, there is the further aspect in this case that the documents have not only been listed along with the plaint but copies thereof have been granted to the appellants.

34. We are therefore of the view that the appellants are entitled to have inspection of the documents and use the same for cross-examination to the extent necessary for the purpose of Section 92, C. P. C. application. The learned counsel for the appellants made it clear that the appellants do not wish to cross-examine the respondents on the merits of the plaints but only for the limited purpose of the contentions of the parties, with regard to the principles governing sanction.

35. We therefore set aside the order of the learned single Judge and allow the appeal, but under the circumstances there will be no order as to costs.

36. Appeal allowed.