

thought it fit to withdraw from this prosecution due to these or some other such considerations. Thus, valid consideration in the light of law noted above was not taken into consideration by the courts below. The impugned orders, as such, cannot be sustained and are set aside. The case would go back to the Magistrate for re-deciding the application filed by the Public Prosecutor in the light of law as discussed above. The court would be at liberty to ask the Public Prosecutor to furnish further details in support of his grounds, if so required.

(13) The present petitions are accordingly disposed of in the above terms.

R.N.R.

Before Jaswant Singh, J.

JASBIR SINGH AND ANOTHER,—Petitioners

versus

**GURU NANAK PUBLIC SCHOOL TRUST AND
OTHERS,—Respondents**

Civil Revision No. 2600 of 2008

21st November, 2008

Code of Civil Procedure, 1908—O.1-Rl. 9, O.7 Rl. 11—Rejection of plaint filed by Trust through its trustee—During pendency of suit death of trustee—Whether plaint is liable to be rejected—Held, no—No suit shall be defeated by reason of misjoinder or non-joinder of parties except necessary party—Trust a necessary party and already there as a plaintiff, therefore, plaint filed by Trust through trustee is not to be rejected under provisions of O. 7 Rl. 11 on ground that trustee had died or original defendants died—Whether application filed under O. 22 Rl. 10 CPC for substitution/ to pursue suit on behalf of plaintiff-trust maintainable—Held, yes—Substitution/impleadment of respondent No. 2 and 3 as defendants after death of defendants and another Trustee after

death of trustee to maintain the suit on behalf of plaintiff held to be justified.

Held, that the present suit filed by respondent No. 1—plaintiff is maintainable as there is no allegation of breach of Trust. Moreover, the present suit is pending since 2000 and in view of the provisions contained in Order 1 Rule 9 of the CPC, no suit shall be defeated by reason of misjoinder or nonjoinder of parties except necessary party. In this case, Trust was/is the necessary party and is already there, as a plaintiff. Therefore, the plaint filed by the Trust through trustee Shri Ranjit Singh Bhail is not to be rejected under the provisions of Order 7 Rule 11 on the ground that trustee Shri Ranjit Singh Bhail had died or original defendants had died.

(Paras 28 and 29)

Further held, that a perusal of Section 2(11) of CPC reveals that Legal Representative is a person who in law represents the estate of a deceased person and includes any person who intermeddle with the estate of the deceased or where a party sues or is sued in representative capacity and the person on whom the estate devolves on the death of the party so sues or sued. Avtar Singh Hunjan is not a person who represents the estate of Mr. Ranjit Singh Bhail or intermeddle with his property/estate and furthermore, the present suit is not in a representative capacity. As for filing a suit in representative capacity provisions of Order 1 Rule 8 of the CPC are to be invoked, but that is not the situation here. Rather in the present case, Trust is the plaintiff and Trust is not a deceased person, therefore, it can be safely concluded that Mr. Avtar Singh is not the Legal Representative of Mr. Ranjit Singh Bhail, therefore, provisions of Order 22 Rule 10 will apply and not Rule 3. Order 22 Rule 3 will be applicable in case of death of plaintiff but in the present case plaintiff is the Trust and which is very much there and Trust has not died, rather it is the devolution of interest of trust in favour of Avtar Singh Hunjan after the death of Ranjit Singh Bhail, being a duly authorized trustee. Therefore, substitution/impleadment of respondents No. 2 and 3 as defendants and Mr. Avtar Singh Hunjan-Trustee to maintain the suit on behalf of plaintiff is justified.

(Paras 32 and 35)

O.P. Goyal, Sr. Advocate with Hari Pal Verma, Advocate and Ashok Kumar, *Advocate for the petitioners.*

Sumit Mahajan, Sr. Advocate with Sham Lal Bhalla, Advocate, K.S. Bhangu, Advocate and Amandeep Singh, Advocate, *for the caveator-respondent No. 1.*

JASWANT SINGH, J.

(1) The present petition under Article 227 of the Constitution of India has been filed by the petitioners, challenging the orders dated 29th February, 2008 (Annexure P-19) and 6th December, 2007 (Annexure P-15), passed by the learned Civil Judge (Senior Division), Ludhiana,— *vide* which (i) applications filed by the petitioners (Jasbir Singh and Surinder Singh sons of Jagat Singh) as well as defendant No. 3—Kulwant Kaur Virdi, under Order 7 Rule 11 of Civil Procedure Code (in short “CPC”) for rejection of plaint has been dismissed; (ii) application filed by Avtar Singh Hunjan under Order 22 Rule 10 of CPC for substitution/to pursue the suit on behalf of the plaintiff-Trust has been allowed; (iii) application filed by present respondents No. 2 and 3 (Prem Singh and Ravinder Singh Sokhi) under Order 22 Rule 10 of CPC for substitution as defendants has been allowed; (iv) alternative prayer made in the application for rejection of plaint filed by the present petitioners (Jasbir Singh and Surinder Singh son of Jagat Singh) for substitution in place of S. Jagat Singh and Giani Bhagat Singh as defendants has been allowed to the extent of impleadment of present petitioners as defendants, without ordering impleadment of Shri Rajwinderjit Singh Gill as defendant in place of Kulwant Kaur Virdi.

(2) The brief facts of the case giving rise to the matter in controversy are that present respondent No. 1—Plaintiff—Guru Nanak Public School Trust, Sarabha Nagar, Ludhiana (hereinafter referred to as “the Trust”) filed Civil Suit dated 21st February, 2000 through Sh. Ranjit Singh Bhail in the court of learned Civil Judge (Senior Division), Ludhiana for rendition of accounts and permanent injunction restraining defendants No. 1 and 2-S. Jagat Singh and Giani Bhagat Singh from posing themselves as Secretary and Member of Local Managing Committee of the School being run by the Trust and further restraining defendant No. 3—Mrs. Kulwant Kaur Virdi from posing and

working as Principal of Guru Nanak Public School”, Sarabha Nagar, Ludhiana (hereinafter referred to as “School”) by alleging that Ranjit Singh Bhail, Non Resident Indians (NRI) created a trust on 20th December, 1969 for higher and quality education to the Punjabies settled in country and abroad on the basis of philosophy of guru and his teachings. In the Trust apart from himself being the settler, Sh. Ranjit Singh Bhail nominated 11 other persons as trustees. The Trust was registered on 25th February, 1970 against Wasika No. 462 with Sub-Registrar, Ludhiana. It is further alleged that a sum of Rs. 1,35,628.50 Ps, was deposited on 8th September, 1970 and thereafter a sum of Rs. 2,70,256.50 Ps, alongwith further interest was deposited and a sale deed dated 13th June, 1973 for the land measuring 30.28.22 sq. yards situated at Kartar Singh Sarabha Nagar, Ludhiana was executed in favour of the Trust by Improvement Trust, Ludhiana. School is being run on that very land. It is further alleged that Sh. Ranjit Singh Bhail had contributed lot of money from his own pocket as he was fully devoted towards the aims and objectives of the Trust. Later on due to death of some trustees, constitution of the Trust was amended and re-registered on 7th June, 1973 against Wasika No. 2096 with Sub-Registrar, Ludhiana but the basic body of the Trust remained the same. Once again Trust was re-registered due to some changes on 25th October, 1983 against Wasika No. 8921 with Sub-Registrar, Ludhiana. It is further alleged in the Civil Suit that for effective running of the institution/School founded by the Trust, a managing committee was formed in which Jagat Singh—defendant No. 1 was nominated one of the members. Sh. Ranjit Singh Bhail was Secretary of the Trust. On 25th October, 1983, managing committee was re-constituted and Jagat Singh became Secretary of the managing committee for a term of 5 years. It is further alleged that Jagat Singh—defendant No. 1 alongwith Giani Bhagat Singh—defendant No. 2 and in collusion with Mrs. Kulwant Kaur Virdi—defendant No. 3 took complete control of the management of the school ignoring the other members of the committee. Sh. Ranjit Singh Bhail, who was the Secretary of the Trust remained abroad being a NRI and presumed that the affairs of the Trust are being run in a proper way by the Managing Committee. But a deceive the Trust, Jagat Singh—defendant No. 1 in collusion with other defendants, got the committee registered with the Registrar of Societies,

Punjab with a motive to defy/cheat to Trust. Keeping in view the facts discussed above, it was resolved on 22nd November, 1999 that Sh. Ranjit Singh Bhail, General Secretary of the Trust should take over the charge of the school and scrutinizes the accounts of the Trust. It was also decided to appoint Mr. Rajinderjeet Singh Gill, Vice Principal as acting Principal in place of defendant No. 3. The resolution of the Trust was sent to the Punjab and Sindh Bank also,—vide letter dated 3rd December, 1999 to replace the signatories. It is alleged that defendant No. 1 and 2 in defiance of resolution of the Trust are proclaiming to be members of the managing committee and showing the authority of the Trust, both being influential persons and not allowing the secretary of the plaintiff-Trust, to take control of the record and the premises of the school. Defendant No. 3 was duly informed,—vide letter dated 1st February, 2000 regarding termination of her services, but despite that she has not vacated the office of the Principal. It is further alleged that defendants are admitting new students in the school and collecting huge donation in cash and usurping the amount for their personal use and have started collecting fee, donation, funds on behalf of the plaintiff-Trust and in this way the academic structure of the school is going to have a serious impact due to illegal activities of the defendants. In these circumstances, civil suit was filed.

(3) Thereafter an application dated 28th February, 2000 (Annexure P-2) under Order 7 Rule 11 of CPC for rejection of plaint was filed by the defendants. Written statement to the Civil Suit was filed by the defendants claiming themselves to be the 'managing committee'. When the suit was pending, unfortunately Sh. Ranjit Singh Bhail died on 5th October, 2000, Giani Bhagat Singh—defendant No. 2 died on 11th August, 2003. However, it is alleged by the present petitioners that after the death of Giani Bhagat Singh—defendant No. 2; Sh. Jagat Singh—defendant No. 1 was appointed as President and Sh. Jasbir Singh son of Jagat Singh was appointed as Secretary in place of Jagat Singh by the managing committee,—vide resolution dated 22nd August, 2003.

(4) Thereafter, Jagat Singh—defendant No. 1 also expired on 12th March, 2004 and it is further alleged by the present petitioners that,—vide resolution dated 15th March, 2004 Jasbir Singh, son of Jagat

Singh was appointed as President of the managing committee and Mrs. Kulwant Kaur Virdi superannuated on 10th January, 2002 and in her place,—*vide* resolution dated 15th March, 2004 Sh. Rajenderjit Singh Gill was appointed as Principal of the school by the managing committee.

(5) Thereafter defendant No. 3—Kulwant Kaur Virdi filed an application dated 7th December, 2004 (Annexure P-3) under Order 7 Rule 11 of CPC for rejection of the plaint on the ground that plaintiff as well as defendant No. 1 and 2 in the original suit have died. Reply to the application dated 7th December, 2004 (Annexure P-3) was filed by plaintiff on 14th February, 2005 (Annexure P-3/A) and it was specifically submitted that new defendants stand substituted in place of Giani Bhagat Singh and Jagat Singh.

(6) Thereafter an application dated 3rd of January, 2005 (Annexure P-4) was filed by the present petitioners—Jasbir Singh and Surinder Singh for dismissal of the suit/rejection of the plaint or in the alternative to substitute their name in place of Jagat Singh and Giani Bhagat Singh as defendants No. 1 and 2 as under :—

- | | |
|--------------------|-----------|
| (i) Surinder Singh | Secretary |
| (ii) Jasbir Singh | President |

(7) And in place of Kulwant Kaur Virdi, name of Rajinderjit Singh Gill may be replaced as Principal, as she has already retired on 10th January, 2002.

(8) It appears that one Prem Singh and Harminder Singh claiming themselves to the President and Secretary respectively also moved an application dated 16th November, 2004 (Annexure P-5) under order 22 Rule 10 CPC for substitution of their name in place of Giani Bhagat Singh—defendant No. 2 and Jagat Singh—defendant No. 1 respectively. The said application was sought to be withdrawn by way of subsequent application dated 5th October, 2005 (Annexure P-6).

(9) Thereafter reply dated 22nd February/22nd May, 2005 (Annexure P-7) was filed by plaintiff-respondent No. 1 to the application dated 3rd January, 2005 (Annexure P-4) filed by petitioners and it was specifically submitted that in the meeting of the Trust held on 8th July,

2004 Sh. Avtar Singh Hunjan was appointed as trustee and was authorized to represent the Trust in the pending court cases and he appeared in this case also and filed power of attorney. It was further submitted that list of members was filed in the court and as per that list the names of Jasbir Singh and Surinder Singh, present petitioners were not there. It was further submitted that 'Guru Nanak Public School Trust' is the plaintiff and the Trust is being represented through Avtar Singh Hunjan, trustee and there is no confusion. It was further submitted that so far as defendants are concerned, there are now two sets of persons who are now claiming substitution as office bearers of the alleged Society registered with the Registrar of the Societies, Punjab. Similarly another reply dated nil was filed by one Prem Singh and Surinder Singh Sokhi claiming themselves to be President and Secretary of the Managing Committee and that is appended as Annexure P-8 and they submitted that the suit was filed by Shri Guru Nanak Public School Trust through Shri Ranjit Singh Bhail and although Shri Bhail has died but the Trust which is a party to the suit stood as never died and Avtar Singh Hunjan who is a trustee is pursuing the case.

(10) Thereafter another application dated nil under Order 22 Rule 10 of the CPC was filed by present respondent No. 3—Ravinder Singh Sokhi (Annexure P-9) for substitution/impleading S. Prem Singh and S. Ravinder Singh Sokhi as defendants No. 1 and 2 as both of them have been elected as President and Secretary respectively, in the meeting of the Society held on 19th October, 2005. Reply to the above application dated nil was filed on 3rd December, 2005 (Annexure P-10) by the present petitioners—Jasbir Singh and Surinder Singh and controverted the contents of the application. They have further submitted that Managing Committee is being managed and controlled by Shri Jasbir Singh as President and Surinder Singh as Secretary alongwith other office bearers and it was further submitted that neither Prem Singh nor Ravinder Singh Sokhi or Harmohinder Singh are the members of the Committee and therefore, Prem Singh and Ravinder Singh Sokhi are not entitled to be impleaded as defendants No. 1 and 2.

(11) Thereafter another application dated 10th May, 2006 was filed (Annexure P-11) under Order 22 Rule 10 read with

Section 151 of CPC by the plaintiff with a prayer that Avtar Singh Hunjan may be allowed to continue with the suit and pursue the same on behalf of the plaintiff-Trust on the ground that Shri Ranjit Singh Bhail has since died and vide resolution dated 8th July, 2004 of the Trust he has been authorized to represent the court cases on behalf of the Trust. Reply to the above said application was filed by the present petitioners—Jasbir Singh and Surinder Singh on 16th May, 2006 (Annexure P-12) and denied the averments made in the application and inter-alia submitted in Preliminary Objection No. 2 that Ranjit Singh Bhail had died in the year 2000 and the present application is filed on 10th May, 2006, therefore, the same is hopelessly time barred and should be dismissed as every application has to be brought within a period of three years. In para 3 of the Preliminary Objections it was submitted that Avtar Singh Hunjan is neither the trustee nor he has any right on behalf of the plaintiff to come on record, neither any copy of the alleged resolution dated 8th July, 2004 has been placed on record.

(12) Thereafter another application dated 30th May, 2006 (Annexure P-13) was filed by the petitioner(s) with a prayer to jointly decide all the pending applications before the learned trial court. Reply to the above said application dated 30th May, 2006 was filed by the plaintiff—respondent No. 1 (Annexure P-14) and it was specifically submitted in reply to Para No. 1 that Avtar Singh Hunjan is the President and Surinder Singh Sokhi is the Secretary and it was further submitted that two applications are pending and it is yet to be decided by the learned trial court as to who is actual and factual successor of Jagat Singh and Bhagat Singh—Secretary and President of the Local Managing Committee of the school.

(13) *Vide* order dated 6th December, 2007 (Annexure P-15) learned trial court allowed the alternative prayer made by the present petitioners in their application dated 3rd Janaury, 2005 (Annexure P-4) to the extent that Jasbir Singh and Surinder Singh were ordered to be substituted in place of defendant No. 1 and further allowed application dated nil (Annexure P-9) for impleadment/substitution

of Prem Singh and Ravinder Singh Sokhi in place of defendants No. 1 and 2. Operative part of the order is reproduced here as under :

“Learned counsel for the plaintiff has moved an application that he has no objection if name of Jasbir Singh, Surinder Singh, both sons of Jagat Singh are substituted in place of defendant No. 1 and they are made to contest the present suit. He has no objection if in place of defendants No. 1 and 2 Ravinder Singh Sokhi and Prem Singh are allowed to contest the suit. In view of the no objection of the counsel for the plaintiff, the names of these persons are substituted on record. Let amended plaint, impleading their names be filed for 11th December, 2007 and consideration be also heard on the application.”

(14) The net affect, after the passing of the order is that in place of original three defendants namely Jagat Singh (who died on 12th March, 2004), Bhagat Singh (who died on 11th August, 2003) and Kulwant Kaur Viridi (who superannuated on 10th January, 2002), now four persons namely Jasbir Singh, Surinder Singh sons of Jagat Singh; and Prem Singh and Ravinder Singh Sokhi were ordered to be substituted as defendants in the aforesaid suit.

(15) Thereafter another application dated 19th January, 2008 (Annexure P-16) under section 151 of CPC for review of the order dated 6th December, 2007 (Annexure P-15) was filed by the present petitioners—Jasbir Singh and Surinder Singh. The plaintiff filed their reply dated 9th February, 2008 (Annexure P-16/A) to the above mentioned application dated 19th January, 2008 (Annexure P-16) and it was specifically mentioned in reply to para 2 of the application that the counsel of the plaintiff suffered a statement that he has no objection for impleading Jasbir Singh and Surinder Singh both sons of Jagat Singh in place of defendant No. 1 and he has no objection if Ravinder Singh Sokhi and Prem Singh are allowed to contest the present suit. Names of the persons have been substituted in the present suit and the amended plaint has already been filed.

(16) Thereafter *vide* impugned order dated 29th February, 2008 (Annexure P-19) learned trial court has disposed of the application

dated 7th December, 2004 (Annexure P-3) filed by Kulwant Kaur Viridi—original defendant No. 3 and application dated 3rd January, 2005 (Annexure P-4) filed by petitioners under Order 7 Rule 11 for rejection of plaint; application dated nil (Annexure P-9) filed by respondents herein No. 2 and 3 and application dated 10th May, 2006 (Annexure P-11) filed by Avtar Singh Hunjan under Order 22 Rule 10 for substitution ; and has held that Guru Nanak Public School Trust is a registered Trust and juristic person in the eyes of law and suit filed by it cannot abate and application under Order 22 Rule 10 of CPC to pursue the suit on behalf of the plaintiff has been allowed and further the application of defendants for dismissal of the suit has been dismissed. It has further been ordered that there is no limitation for making an application for bringing on record LR under Order 22 Rule 3 of the CPC as amended by Punjab and Haryana High Court and application under Order 7 Rule 11 for rejection of the plaint filed by the petitioners/defendants is also dismissed and operative part of the order is reproduced below :

“Para 13 : After going through the submissions advanced by both the learned counsel for the parties, if the documents on the record are seen there is a Trust Deed dated 25th February, 1970 produced by the plaintiff on the record which is registered vide Wasika No. 462, vahi No. 4, Zild No. 13, Pana No. 281 on 25th February, 1970. Learned counsel for the plaintiff has further produced on record another Trust Deed bearing Wasika No. 462, Vahi No. 4, Zild No. 13 Pana No. 281 wherein the rules and regulations are observed by the trustees are recorded. This Trust Deed is also registered Trust Deed. There is another copy of trust deed of Guru Nanak Public School Trust which has also been registered on 7th June, 1973 wherein also rules and regulations of the trust are there. Another copy of the trust i.e. Guru Nanak Public School Trust have been put by the plaintiff on the record which is dated 25th October, 1983 regarding rules and regulations, Trust working of the trustees on the record. Learned Counsel for the plaintiff has also put on record the sale deed in

*favour of the Guru Nanak Public School which is registered on 7th June, 1973. As such the learned counsel for the plaintiff has argued that since the Trust is registered Trust it is juristic person. A simple suit for injunction on the death of the defendant or the plaintiff the suit can not abate. The Plaintiff has further filed the suit for rendition of accounts and the same can be maintained in view of the fact that Guru Nanak Public School is registered Trust and juristic person in the eyes of law. Learned counsel for the defendant denies this fact. However the fact remains that Guru Nanak Public School Trust is registered person and juristic person in the eyes of law. The suit filed by it cannot abate. As such the application under Order 22 Rule 10 of CPC read with Section 151 of CPC cannot be dismissed and the same is also allowed. As such the application of the answering defendants for dismissal of the suit as Ranjit Singh Bhail has expired is also not maintainable and the same is hereby dismissed. In view of the fact that the present Trust is a registered Trust in the eyes of law. In view of the authority **Kali Ram vs. Mangat Ram** 2001 (2) Civil Court Cases 241 (P & H) cited by the learned counsel for the plaintiff that there is no limitation for making an application for impleading LRs after amendment in Order XXII Rule 3 of Punjab and Haryana High Court - The list of the parties should not fail on the technicalities and procedural wrangles. The objection of the defendant that the application of the plaintiff for bringing legal heir is also time barred is not maintainable. Since the suit filed by Trust for rendition of account, I am of the view that the application for rejection of the plaint filed by the defendant cannot also succeed and the same is hereby dismissed."*

(17) Hence the present petition under Article 227 of the Constitution of India has been filed by the petitioners challenging the orders dated 6th December, 2007 (Annexure P15) and order dated 29th

February, 2008 (Annexure P19) passed by the learned Civil Judge (Senior Division), Ludhiana.

(18) I have heard counsel for the parties and perused the record carefully.

(19) Counsel for the respondent No. 1—Trust -plaintiff at the very outset states that he has no objection if Shri Rajinderjit Singh Gill is substituted/impleaded as the fifth defendant in place of Mrs. Kulwant Kaur Virdhi.

(20) In the present case two issues / points are involved for adjudication : (i) Whether keeping in view the provisions of order 7 Rule 11 of CPC, the plaint (Annexure P-1) is liable to be rejected or not ; (ii) Whether substitution/impleament of the respondents No. 2 & 3 as defendants and Mr. Avtar Singh Hunjan, trustee to maintain the suit on behalf of plaintiff—respondent No. 1 is justified or not ?

(1) That so far as point No. 1 is concerned, it is necessary to reproduce the Order 7 Rule 11 [relevant clause (a) to (d)] of the CPC which read as under :

“11. Rejection of plaint – *The plaint shall be rejected in the following cases :-*

- (a) Where it does not disclose a cause of action ;
- (b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the court, fails to do so;
- (c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the court, fails to do so;
- (d) Where the suit appears from the statement in the plaint to be barred by the law.”

(21) So far as legal position regarding deciding an application for rejection of the plaint under Order 7 Rule 11 is concerned, it is well settled that only averments made in the plaint are to be looked into and the pleas taken by the defendants in the written statement would be wholly irrelevant and reference is made in this regard to Hon'ble Supreme Court decision rendered in "**Popat and Kotecha Property versus State Bank of India Staff Association**" (1) and relevant paras 14 to 20 are as under :—

- “14. In **Saleem Bhai versus State of Maharashtra** it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit—before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the please taken by the defendant in the written statement would be wholly irrelevant at that stage.
15. In **I.T.C. Ltd. versus Dcbts Recovery Appellate Tribunal** it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.
16. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting

(1) 2005 (7) S.C.C. 510

has created illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (**See T. Arivandandam versus T.V. Satyapal**)

17. It is trite law that not any particular plead has to be considered, and the whole plaint has to be read. As was observed by this Court in **Roop Lal Sathi versus Nachhattar Singh Gill** only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.
18. In **Raptakos Brett & Co. Ltd. versus Ganesh Property** it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.
19. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.
20. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is a tool in the hands of the courts by resorting to

which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.”

(22) The plea of the petitioners that suit for permanent injunction and rendition of account was filed on 21st February, 2000 by respondent No. 1 —Trust through Sh. Ranjit Singh Bhail, one of the trustee and as per Trust, in the plaint there are 12 trustees and there is no reference given in the plaint as to how many trustees are alive or dead, further plea that the resolution has not been passed by the majority and wrong translation of clause 4 of the Trust Deed is appended are not tenable for the purpose of deciding an application under Order 7 Rule 11 of the CPC. There are debatable issues and disputed question of facts which can only be decided by the learned Trial Court after leading evidence by both parties and hearing their arguments but the plaint cannot be rejected at the threshold on this count as only contents of plaint are to be seen, further plea raised is that an application dated 28th February, 2000 (Annexure P-2) filed by Late Sh. Jagat Singh and Late Sh. Bhagat Singh (original defendants) is pending and neither any reply has been filed nor the application has been decided by learned Trial Court. This plea is also not tenable and is liable to be rejected due to the reason that similar applications dated 7th December, 2004 (Annexure P-3) filed by defendant No. 3—Mrs. Kulwant Kaur Virdhi and dated 3rd January, 2005 (Annexure P-4) filed by present petitioners have been dismissed by learned Trial Court,—vide impugned order dated 29th February, 2008 (Annexure P-19) and third application i.e. Annexure P-2 will not make any difference as, it is already concluded above that for deciding the application under Order 7 Rule 11, it is the contents/averments of the plaint which are to be seen and no pleas of the defendants can be taken into consideration. Meaning thereby, had there been more than 3 applications under Order 7 Rule 11 of the CPR that would not make any difference for rejection of the plaint by the learned Trial Court, because the contents of the plaint will remain the

same and those will not be varied/changed on the increasing/successive number of applications filed by the defendants. Moreover, the application dated 28th February, 2000 (Annexure P-2) was filed by original defendants No. 1 and 2, who are already dead and present petitioners are not claiming themselves to be impleaded their LRs under Order 22 Rule 4 of the CPC, rather they are claiming their substitution under Order 22 Rule 10 of the CPC, therefore, on that count also they are not entitled to press the application (Annexure P-2). Even otherwise, their own application under Order 7 Rule 11 of the CPC already stands rejected and merely that a similar application Annexure P-2 is pending is not a ground to interfere with impugned order Annexure P-19.

(23) Further plea raised is that Trust is not a legal entity and learned Trial Court has wrongly held that Trust is a legal entity and reference in this regard has been made to “**Mandir Jamuna Dass Jawaharlal S. Sanatam Dharam Mahabir Dal Trust versus Shankar Dass**” (2) “**Shri Duli Chand versus M/s Mahabir Pershad Trilok Chand Charitable Trust through its Secretary, Sh. Tara Chand Jain**” (3) “**Atmaram Ranchhodhai versus Gulamhusein Mohiyaddin and another**” (4) “**Bajjnath Ram and others versus Mt. Tunkowati Kuer and others**” (5). The plea of the petitioners is not legally sustainable for deciding an application under Order 7 Rule 11 of the CPC. The question whether the present Trust is a legal entity or not is a mixed question of facts and law and is a debatable issue and same is to be decided after considering the rival contention as well as evidence of both the parties and at this stage the plaint cannot be rejected by recording a finding that present Trust is not a legal entity.

(24) Further plea raised by the petitioners is that plaint was liable to be rejected due to the reason that there was non compliance of Section 92 of CPC. This contention is not acceptable in view of law

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- (2) 2003 (1) R.C.R. (Rent) 582
 - (3) 1984 (1) R.C.R. (Rent) 422
 - (4) AIR 1973 Gujarat 113 (FB)
 - (5) AIR 1962 Patna 285 (FB)

laid down in “**Ram Pal Kanwal and others versus Sweatamber Sthanic Jain Sabha, Faridkot (Regd.) and others**” (6), relevant para No. 22 read as under :

“22. Coming to his second contention, Mr. Anand Swaroop, learned counsel for the appellants has vehemently asserted that even if the suit property was proved to be endowed property, the suit for possession is property was proved to be endowed property, the suit for possession as titled by the plaintiff-respondent in the present from was not maintainable and at the most it could have resorted to proceedings under Section 92 of the Code of Civil Procedure. There is no difficulty in repelling this contention of the learned counsel. It has been settled by now that such a suit is always maintainable on behalf of the idol, endowment or trust etc. without resorting to proceedings under Section 92 of the Code of Civil Procedure. As a result of the authorities reported as *Desu versus Jawala, Rangasami Naidu versus Krishnaswami Aiyar, Ettiyat Ahmed Kutty versus Vayalihath Ayithraman Kutty, Shadi Ram versus Ram Kishen and others and Bishwanath versus Shri Thakur Kadha Ballahji*, to maintain a suit of this type, the rights of worshippers and followers of a particular religion have been upheld as under in *Shadi Ram’s case* (supra) :—

“The worshippers who are the beneficiaries entitled to participate in the benefits of the institution, are entitled to maintain a suit for preserving the trust property or restoring the property to the trust either by instituting a suit for declaration or for an injunction or even for possession : but whether the worshippers are entitled to claim all or any of the reliefs which a trustee is entitled to do in a properly framed suit and where he is made a party, it is open to the Court to mould the relief as the circumstances of each case. It is desirable and necessary to make

the trustee a party to mould the relief as the circumstances may require. If the suit is one brought for possession by the worshippers, the court can, after declaring the property to be trust property and setting aside the alienation, direct delivery of possession to the trustee.

Consequently, the second contention of the learned counsel is also repelled being without any merit.”

(emphasis supplied)

(25) In view of this judgment, suit is always maintainable without resorting to proceeding under Section 92 of CPC. The main purpose of Section 92 is to give protection to public trust from being subjected to harassment by the suit filed against it, Section 92 CPC is not applicable when suit is instituted by the Trust against a third party. The condition precedent to invoke the provisions of Section 92 of the CPC is that there should be a breach of Trust and direction is sought from the civil court for its administration; but in the present case there is no allegation of breach of the trust. The dispute is related to the school appertaining to the Trust and a relief is claimed by the plaintiff-Trust for rendition of accounts of the school and prayer clause of the suit is reproduced here as under :—

*“It is therefore prayed that **a decree for permanent injunction** restraining defendant No. 1 and 2 from posing as secretary and member of Local managing committee of Guru Nanak Public School Trust, respectively and restraining defendant No. 3 from posing and working as Principal of Guru Nanak Public School Sarabha Nagar, Ludhiana being run by the plaintiff Trust and further restraining the defendant from accepting any donation, fee and or any amount from any person on behalf of the plaintiff trust and its managing committee or the schools run by the plaintiff trust by the name of Guru Nanak Public Schools and further restraining the defendants from operating or dealing in any manner any bank accounts*

*opened under the name of Guru Nanak Public School Trust managing committee, schools or by any other name in which amounts collected on behalf of the plaintiff trust or its further managing bodies or schools and further restraining the defendants from interfering in the management of the school functioning under the trust and **a decree for mandatory injunction** directing the defendants to handover the records of the schools being run under the plaintiff trust and the records relating to the Trust and its managing committee and **a decree for rendition of accounts** directing the defendants to render the accounts in regularization to the funds collected and spent on behalf of the trust and the school functioning under the trust, may kindly be passed in favour of the plaintiff and against the defendants with costs”*

(emphasis supplied)

(26) The Hon’ble Supreme Court in the case of “**Mahant Pragdasji Guru Bhagwandasji versus Patel Ishwarlalbhai Narsibhai and others**” (7), in para No. 10 laid down as under :—

*“10. A suit under Section 92 of the Civil Procedure Code is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the court are necessary for the administration thereof, and it must pray for one or other of the reliefs that are specifically mentioned in the section. It is only when these conditions are fulfilled that the suit has got to be brought in conformity with the provision of Section 92 of the Civil Procedure Code. As was observed by the **Privy Counsel in Abdur Rahim versus Barkat Ali** a suit for a declaration that certain property appertains to a religious trust may lie under the general law but is outside the scope of Section 92 Civil Procedure Code. In the case before us,*

(7) AIR 1952 S.C. 143

the prayers made in the plaint are undoubtedly appropriate to the terms of Section 92 and the suit proceeded on the footing that the defendant, who was alleged to be the trustee in respect of a public trust, was guilty of breach of trust. The defendant denied the existence of the trust and denied further that he was guilty of misconduct or breach of trust. The denial could not certainly oust the jurisdiction of the court, but when the courts found concurrently, on the evidence adduced by the parties, that the allegations of breach of trust were not made out, and as it was not the case of the plaintiffs, that any direction of the court was necessary for proper administration of the trust, the very foundation of a suit under Section 92 of the Civil Procedure Code became wanting and the plaintiffs had absolutely no cause of action for the suit they instituted. In these circumstances, the finding of the High Court about the existence of a public trust was wholly inconsequential and as it was unconnected with the ground upon which the case was actually disposed of, it could not be made a part of the decree or the final order in the shape of a declaratory relief in favour of the plaintiffs. It has been argued by the learned counsel for the respondents that even if the plaintiff failed to prove the other allegations made in the plaint, they did succeed in proving that the plaintiffs failed to prove the other allegations made in the plaint, they did succeed in proving that the properties were public and charitable trust properties—a fact which the defendant denied. In these circumstances, there was nothing wrong for the court to give the plaintiffs a lesser relief than what they actually claimed. The reply to this is, that in a suit framed under Section 92 of the Civil Procedure Code the only reliefs which the plaintiff can claim and the court can grant are those enumerated specifically in the different clauses of the section. A relief praying for a declaration that the properties in suit trust properties does not come under any of these clauses. When the defendant denies the existence of a trust, a declaration

that the trust does not exist might be made as ancillary to the main relief claimed under the Section if the plaintiff is held entitled to it; but when the case of the plaintiff fails for want of a cause of action, there is no warrant for giving him a declaratory relief under the provisions of Section 92 of the Civil Procedure Code. The finding as to the existence of a public trust in such circumstances would be no more than an abiter dictum and cannot constitute the final decision in the suit. The result is that in our opinion the decision of the High Court should stand, but the decree and the concluding portion of the judgment passed by the trial court and affirmed by the High Court on appeal shall direct a dismissal of the plaintiffs suit merely without its being made subject to any declaration as to the character of the properties. To this extent the appeal is allowed and the final decree modified. The order for costs made by the courts below will stand. Each party will bear his own costs in this appeal."

(27) And Hon'ble Supreme Court in subsequent judgment reported as "**Harendra Nath Bhattacharya and others versus Kaliram Das (dead) by his heirs and LRs. and others**" (8) in relevant para 13 laid down as under :—

13. The High Court analyzed the plaint which is primarily to be looked at for deciding the question of applicability of Section 92. The High Court was of the view that the reliefs claimed in the plaint were stated mainly in Para 12, which is analysed, would involve the following :—

(1) A declaration that the suit land was Dharmottar land gifted to Bhanukuchi Sat Sangi Satra for a religious purpose and that the defendants had no personal interest therein except as trustees for the management of the Satra;

- (2) *A declaration that the defendants were bound to maintain the Satra with the income of the suit lands by observing the Doul festival and the usual Nam-Kirtan;*
- (3) *For a declaration that the plaintiffs as Bhakatas of the Satra were entitled to possess their own Basti and Paddy lands and that they have a right of access to the use of the Satra for various religious purposes.*
- (4) *A claim for possession of the lands confined to the above relief.*

It was added in the plaint that a scheme case would be instituted later on if considered necessary. The High Court was of the view that none of the reliefs claimed in the plaint brought it within the terms of Section 92. It is well settled by the decisions of this Court that a suit under Section 92 is of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the Court are necessary for the administration of the trust. In the suit, however, there must be a prayer for one or other of the reliefs that are specifically mentioned in the section. Only then the suit has to be filed in conformity with the provisions of Section 92 of the Code of Civil Procedure. (See Mahant Pragdasji Guru Bhagwandasji versus Patel Ishwarlalbhai Narsibhai and others) It is quite clear that none of the reliefs claimed by the plaintiffs fell within the section. The declarations which were sought could not possibly attract the applicability of Section 92 of the Civil Procedure Code. The High Court was, therefore, right in holding that non-compliance with that section did not affect the maintainability of the suit."

(28) Thus, in view of the settled proposition of law, quoted above, the present suit filed by respondent No. 1—plaintiff is maintainable as there is no allegation of breach of Trust. Moreover, the present suit is pending since 2000 and in view of the provisions contained in Order 1 Rule 9 of the CPC, no suit shall be defeated by reason of misjoinder

or nonjoinder of parties, except necessary party. In this case Trust was/is the necessary party and is already there, as a plaintiff.

(29) Therefore, the plaint filed by the Trust through trustee, Sh. Ranjit Singh Bhail is not to be rejected under the provisions of Order 7 Rule 11 on the ground that trustee Sh. Ranjit Singh Bhail had died or original defendants had died.

2. That so far as substitution/impleadment of petitioners as defendants is concerned that was their own "alternative prayer" in the application dated 3rd January, 2005 (Annexure P-4) and the same was not objected by the plaintiff and consequently they were allowed to be arrayed as defendants. So far as substitution/impleadment of respondent No. 2 and 3 are concerned that was also not objected by the plaintiff and they were also substituted as defendants and therefore, petitioners cannot and should not have any objection for their impleadment, because the plaintiff is dominus litus of the case and if they (plaintiff) has not raised any objection to the impleadment/substitution of respondents No. 2 and 3 as defendants, then certainly the petitioners (as co-defendants) cannot raise any objection. In the case in hand there are two sets of defendants who are claiming their substitution/impleadment and plaintiff is not sure which is the real defendant out of these two sets. In such a situation the plaintiff has done the right thing by not objecting to the substitution of both the parties as defendants. Moreover Order 1 Rule 7 of CPC is applicable in such a situation and that can be pressed into service as Order No. 1 Rule 7, provides—"Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties." So far as impleadment of one Rajinderjit Singh Gill is concerned; for his impleadment, petitioners themselves made an alternative prayer in their application dated 3rd January, 2005 (Annexure P-4) and the same is not being opposed now in this court by the present respondents No. 1, 2 and 3. Consequently he is also ordered to be impleaded as a defendant.

(30) The plea raised by the petitioners that application under Order 22 Rule 10 of the CPC filed by Mr. Avtar Singh Hunjan is not maintainable as there was no proper resolution and there is no

authorization either in his favour or in favour of Mr. Ranjit Singh Bhail and further that application under Order 22 Rule 3 was required to be filed by Mr. Avtar Singh and not under Order 22 Rule 10 of CPC is not tenable. The resolution passed by Trust in favour of Mr. Ranjit Singh Bhail, is already on record as mentioned in para 1 of the plaint (Annexure P-1). It is specifically pleaded that the Trust,—*vide* its resolution has empowered Sh. Ranjit Singh Bhail its Secretary, to institute the suit and at this stage, as already discussed the contents of the plaint are to be seen and not the plea of the defendants. Therefore, keeping in view the averments made in para 1 of the plaint it has to be presumed that there was a valid resolution in favour of Mr. Ranjit Singh Bhail and once that is so, then after the death of Mr. Ranjit Singh Bhail, Mr. Avtar Singh has been duly authorized to pursue the case by the Trust by passing a resolution dated 8th July, 2004 and thus there is no illegality in substitution of the name of Avtar Singh in place of Ranjit Singh Bhail. Moreover, in this case the Trust is the plaintiff and not Mr. Ranjit Singh Bhail. The Trust being a legal entity/juristic present will never die with the death of Mr. Ranjit Singh Bhail, rather it will continue as it is. Trustes may go on changing but Trust will be there until and unless, it is dissolved according to law/trust deed.

(31) The plea of the petitioners that applications have been made under provisions of Order 22 Rule 10 of CPC and not under Order 22 Rule 3 of CPC is not legally sustainable. The provisions of Order 22 Rule 3 of CPC are attracted in case of death of sole plaintiff or one of several plaintiffs an application is to be made and Legal Representative of the deceased/plaintiff is to be made a party. The word “Legal Representative” is defined under Section 2(11) of CPC which is reproduced herein under :—

“Legal representative means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.”

(32) A perusal of Section 2(11) above reveals that Legal Representative is a person who in law represents the estate of a deceased person and includes any person who intermeddle with the

estate of the deceased or where a party sues or is sued in representative capacity and the person on whom the estate devolves on the death of the party so sues or sued. In the case in hand, Avtar Singh Hunjan is not a person who represents the estate of Mr. Ranjit Singh Bhail or intermeddle with his property/estate and furthermore, the present suit is not in a representative capacity. As for filing a suit in representative capacity provisions of Order 1 Rule 8 of the CPC are to be invoked, but that is not the situation here. Rather in the present case, Trust is the plaintiff and Trust is not a deceased person, therefore, it can be safely concluded that Mr. Avtar Singh is not the Legal Representative of Mr. Ranjit Singh Bhail, therefore, provisions of Order 22 Rule 10 will apply and not Rule 3. Order 22 Rule 3 will be applicable in case of death of plaintiff but in the present case plaintiff is the Trust and which is very much there and Trust has not died, rather it is the devolution of interest of trust in favour of Avtar Singh Hunjan, after the death of Ranjit Singh Bhail, being a duly authorized trustee. Reliance has been made in “**Thirumalai Pillai and others versus Arunachella Padayachi and others**” (9), the Head Note—(b) is reproduced as under :—

“(b) Civil P.C., 0.22, R.10—Trustees dying or retiring during pendency of a suit—Persons elected to fill their places can be added as party apart from limitation.

Where some of the trustees die or retire during the pendency of the suit and new persons are elected to fill their place. It is a case of devolution of interest during the pendency of a suit and the elected persons can be added as parties under Order 22 Rule 10, notwithstanding the question of limitation AIR 1922 Mad, 402 and AIR 1924 Mad. 615.”

(33) And this was quoted with approval by a Division Bench of this Hon’ble Court in “**Roshan Lal Kunai Mal and others versus Kanpur Chand and others**” (10), *Head Note (a)* is as under :—

“(a) Civil P.C. (1980), Order 22 Rule 3, 10—Representative suit by trustees—Death of some of the

(9) AIR 1926 Madras 540

(10) 1993 HRR 40

trustees during pendency of suit—Newly appointed trustees are not representatives of deceased trustees within Order 22 Rule 3—New trustees can be added as parties under Order 22 Rule 10 notwithstanding question of limitation : AIR 1923 Mad. 540, Rel, on AIR 1952 Pat 323 and AIR 1933 Cal 329 and air 1951 Simla 257, Ref.”

(34) Further a plea is raised by the petitioners that application moved by Mr. Avtar Singh Hunjan under Order 22 Rule 10 of CPC is beyond period of limitation as Mr. Ranjit Singh Bhail died in 2000, resolution is alleged to have been passed on 8th July, 2004 and application under Order 22 Rule 10 CPC was filed by Avtar Singh only on 10th May, 2006 (P-11). This plea is also not tenable in view of judgment reported as “**Faquir Singh and others of Sangrur versus Smt. Saraswati Devi and others**” (11), in that case cause of action arose in the year 1987 and application under Order 22 Rule 10 was made in the year 1991 and after considering numerous judgment, learned Single Bench of this Hon’ble court held that delay is not fatal for an application under Order 22 Rule 10 of the CPC and the same view is expressed in AIR 1960 Punjab and Haryana Page 382 (Supra) and AIR 1926 Madras Page 540 (Supra).

(35) Therefore, substitution/impleadment of the respondent No. 2 and 3 as defendants and Mr. Avtar Singh Hunjan—Trustee to maintain the suit on behalf of plaintiff is justified.

(36) Counsel for the petitioner has confined his challenge only to the impugned order dated 29th February, 2008 (Annexure P-19) and has given up his challenge to the impugned order dated 6th December, 2007 (Annexure P-15).

(37) In view of the above discussion, this Court is not inclined to interfere with the impugned order dated 29th February, 2008 (Annexure P-19), in exercise of jurisdiction under Article 227 of the Constitution of India as the same does not suffer from any illegality or perversity. Consequently, the petition is dismissed. However, keeping in view the fact that the interest of public Trust is involved, the learned trial Court is, therefore, directed to decide the pending suit expeditiously.