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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On:	Pronounced On:
22.07.2026	11.11.2026

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.98 of 2018
and C.M.P.No.2164 of 2018

Case QR

CNR: {HCMA010496052018}

M.Jawaharlal Bhora (died)

1. J.Harishkumar
S/o Jawaharlal Bhora

2.J.Gowtham
S/o Jawaharlal Bhora

3.J.Pawankumar
S/o Jawaharlal Bhora

4.Asha
D/o Jawaharlal Bhora

5.J.Sathishkumar
S/o Jawaharlal Bhora

6.J.Sureshkumar
S/o Jawaharlal Bhora

7.Vanthana
W/o Prakash

All Are Residing At
147/57, T.K.Nambi St.,
Kanchipuram Town, Kanchipuram District.

Appellant(s)

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Vs.

1. Besthava Naidu Community
REP.BY C.G.Kesavalu Naidu (died)
1.DAYALAN(died) S/O DEVARAJALU NAIDU 77,
VILKKAI KOIL ST., KANCHIPURAM

2.K.Parasuraman
S/o Kuppusamy No.9, Oil Monger St., Royapettai
Chennai - 14

3.Rajagopal (died)
A.ETHIRAJI NADIU (DIED)

3.M.SRI RAMULU NAIDU(died) S/O NADHAMUNI
NADIU 22, SIRUKAVERIPAKKAM VILLAGE,
KANCHIPURAM VIA KANCHIPURUAM DT.

4.P.SRINIVASAN(Died)
S/o Parthasarathi T.K.Nambi St., Kanchipuram
Kanchipuram Dt.

5.D. Chandrababu
S/o. Duraikannu, D.No.5-A, Singaperumal Koil South
Mada Street, Kanchipuram,

6.R.Babu,
S/o. D.Parthasarathy, D.No.59, T.K.Nambi Street,
Kanchipuram

7.Chandramohan
S/o. Loganathan, D.No.479/74, Salai Street
Sirukaveripakkam, Kanchipuram Taluk and District.

8.Santhoshkumar
S/o. K.Srinivasan, D.No.43/B/61, Poonthottam Stereet,
Kanchipuram – 1

(RR5 to 8 are impleaded as party respondent vide court order dated 13.07.2026 made in CMP.No.17846 of 2026 in S.A.No.98 of 2018)

Respondents

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PRAYER

To set aside the judgment and decree dated 28.02.2017 made in AS.No.72 of 1997 on the file of the learned Sub Court, Kanchipuram confirming the judgment and decree dated 23.04.1997 made in O.S.No.43 of 1996 on the file of the Learned Principal District Munsif Court, Kanchipuram.

For Appellant(s): Mr.N.Manokaran for appellants 1 & 3 to 7

Mr.N.Jothi
Senior Counsel
for Mr.G.Hemath Kumar for 2nd appellant

For Respondent(s): RR 1, 3, 4 - Died (steps Taken)

R2- Incorrect Address

Mr.Y.Jyothish Chander for RR 5 to 8

JUDGMENT

The fourth defendant's legal representatives, are the appellants. The said defendant lost before the learned District Munsif at Kancheepuram in O.S.No.43 of 1996 by a judgment dated 23.04.1997 as well as in his appeal before the learned Subordinate Judge, Kancheepuram in A.S.No.72 of 1997 by a judgment dated 28.02.2017. Aggrieved by the concurrent findings, the present second appeal.

2.For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

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3.The plaintiffs are members of a community called “Besthava Naidu Community”. They presented a suit in O.S.No.92 of 1983 on the file of the learned Subordinate Judge, Kancheepuram, seeking the following reliefs:-

> “*i.declaring that the sale deed dated 31.5.76 in respect of the suit property in favour of the 4th defendant by defendants 1 to 3 and others is null and void and does not bind the community.*
> *ii.directing delivery of possession of the suit property in favour of the Plaintiffs through process of Court,*
> *iii.awarding costs of the suit and grant such other or further reliefs as deem fit in the circumstances of this case*.”

4.It is the case of the plaintiffs that the suit schedule mentioned property absolutely belongs to the Besthava Naidu Community of Chengalpet. They claimed it had been granted as an Inam for the upliftment of the community. The property had been managed by heads of the community, who had been nominated during community meetings held now and then. The property, being a Trust property, was under the management of the 2nd defendant as a Trustee. He had been managing it for several years. The defendants 1 & 3 were assisting him in the management of the Trust property. The 2nd defendant had appeared during the Inam abolition proceedings and had obtained ryotwari patta in the name of the community before the Inam abolition authorities.

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5.The plaintiffs alleged that the 2nd defendant had engineered a dissension in the community. His activities were backed by a handful of community persons. All of them were acting adversely to the interest of the community. They started falsifying the accounts and did not heed to the wishes of majority of the community members. When a demand was made to disclose the accounts, the defendants 1 to 3 refused to furnish the same and started avoiding attending meetings. The defendants 1 to 3, without any authority, sanction of law, necessity and in utter breach of trust, with the help of few persons, formed an association as if they were representing the Besthava Naidu Community. Having formed the association, they alienated the suit property in favour of the 4th defendant for a nominal consideration of Rs.15,000/-. Neither the defendants 1 to 3 nor anybody else had the right to alienate the Trust property without the sanction of the law.

6.The plaintiffs added that being aggrieved by the conduct of the defendants 1 to 3, they formed an association representing the Besthava Naidu Community which is all over the Chengalpet District, in order to restore the property and administer the community property as a whole. This association was registered under the Societies Registration Act and had been given Registration No.37/1976. The 1st plaintiff is the President of the Society, the 2nd

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plaintiff is the Vice President, the 3rd plaintiff is the Secretary and the 4th plaintiff is a member of the Executive Committee. All of them were authorised by a resolution dated 13.02.1977 to present the suit.

7.The plaintiffs claimed that they are the Trustees and are in the Management of the Trust property and they are entitled to recovery the possession of the property on behalf of the Besthava Naidu Community. Before presenting the plaint, the plaintiffs issued a notice to the defendants on 06.08.1976. The defendants issued a reply containing false allegations. Hence, the present suit.

8.When the suit was initially presented, the plaintiffs were delineated as Besthava Naidu Community represented by the Chingleput District Besthava Naidu Samooga Sangam.

9.Pending the suit, the plaintiffs filed an application for amendment. This was in I.A.No.461 of 1986. As per this amendment, the words “represented by the Chingleput District Besthava Naidu Samooga Sangam” were deleted and it was shown that the Besthava Naidu Community was represented by the plaintiffs 1 to 4.

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10.Summons were served on the defendants. The 3rd defendant filed a written statement. He conceded that the suit property is an Inam property. The property had been granted to the forefathers of the defendants 1 and 3. They had been in possession and enjoyment of the property. The grant had been made by the Nawab of Arcot as the defendants' forefathers were Pallaki bearers. They denied the plaintiffs or any of the members of the community have anything to do with the property. The forefathers of the defendants were paying Mandahapadi to Lord Sri Varadaraja of Kancheepuram on the fifth day of the tamil month of Vaikasi. This Mandahapadi was performed from and out of the income from the suit property. The forefathers of the defendants found it was difficult to perform the Mandahapadi by themselves. Therefore, they associated with other community persons to assist them in its performance. The 3rd defendant's father had been managing the property, till his death, about 30 years before the presentation of the suit. After his death, the 3rd defendant started managing the property. He did so with the assistance of the defendants 1 & 2 and other community persons.

11.General Body of the community used to meet often. On 20.05.1976, the General Body met and elected the 1st defendant as the President. Other defendants were elected as the Vice President and Secretary respectively. In this

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resolution, it was resolved to register a Sangam under the Societies Registration Act. Accordingly, on 29.05.1976, the Besthava Naidu Sangam was registered.

12.Since the property was not yielding any income, it was resolved to alienate a portion of the property. Therefore, the General Body of the Sangam held a meeting on 30.05.1976 and passed a resolution to sell a portion of the suit schedule mentioned property in favour of the 4th defendant for a sum of Rs.15,000/-. The Sangam authorised the defendants 1 and 3 to execute the sale deed. As the price offered by the 4th defendant was a very reasonable one, the General Body accepted the same. Consequently, a registered sale deed was executed for a sum of Rs.15,000/- in favour of the 4th defendant.

13.Out of this sum, a sum of Rs.10,000/- was placed in a fixed deposit and Rs.5,000/- was placed in the Small Savings Scheme. Subsequently, both were consolidated into one fixed deposit. The 3rd defendant asserted that the alienation was made on the basis of the resolution passed by the Sangam. The defendants claimed that the plaintiffs are not members of the Sangam and they had not participated in the deliberations of the community, either before or after the registration of the Sangam. Hence, the plaintiffs have no *locus standi* to file a suit.

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14.The plaintiffs' Sangam was devised as a rival faction with a view to snatch the suit property. It was also urged that as the object of the Trust was one earmarked with a religious trust, the Sub Court has no jurisdiction to entertain the suit. The remedy, if at all, is under the Hindu Religious and Charitable Endowments Act. It was also agitated that the suit is barred under Section 92 of the Code of Civil Procedure. It was also claimed, as the plaintiffs asserted that they are representing the members of the Besthava Naidu Community, the suit is barred under Order I Rule 8 of the Code of Civil Procedure. It was also urged that the suit is not in the interest of the community and it had been presented to prevent the defendants from interfering with suit properties and thereby, augmenting the income of the Society. On these pleadings, the 3rd defendant sought dismissal of the suit.

15.The 4th defendant filed a separate written statement. He conceded that the suit property belonged to Besthava Naidu Community. He claimed that originally the grant was made in favour of two individuals and it was a personal grant. The grant was not meant for performance of any service. The grant was never treated as a property of the community. The 4th defendant conceded that the plaintiffs were the members of the community, but urged that they have no *locus standi* as the office bearers of the Besthava Naidu Sangam. Besthava Naidu Sangam is a registered body represented by defendants 1 to 3. A

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resolution had been passed by the registered body in resolution No.2 on 30.05.1976, resolving to sell the suit property as it was not fetching any income. As per the resolution, the suit property was purchased by the 4th defendant for a fair price of Rs.15,000/- and a sale deed was registered on 31.05.1976. The sale consideration was deposited in the name of Besthava Naidu Sangam in the Co-operative Town Bank, Kancheepuram. He urged that prior to the sale, there was no sufficient income from the property and it was in the larger interest of the community, the suit property had been sold.

16.The 4th defendant stated that he is a bonafide purchaser of the suit property for good and valuable consideration from the competent persons. After purchase, he spent around Rs.20,000/- for improving the property. He urged that defendants 1 to 3 as the office bearers of the Sangam were alone competent to alienate the property. He added as there is no specific object for which the Trust was originally created, the Trust is illusory and has to fail at its inception. He added that on the date on which he purchased the property, there was a validly registered society and he purchased the property from the office bearers of the Society. He added, it is not open to the plaintiffs to question the earlier acts of the office bearers. He also urged that the sale had been effected in the larger interests of the community and as the plaintiffs are total strangers to the

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property, they have no *locus standi* to maintain the suit.On these pleadings, the 4th defendant sought dismissal of the suit.

17. On the basis of the pleadings, the learned Trial Judge framed the following issues:-

> "1/ jhth brhj;ij kPl;gjw;F thjpfSf;F tHf;F jhf;fy; bra;a cupika[z;lh?
> 2/ 4k; gpujpthjpngupy; Vw;gl;l fpuak; rl;lg;go bry;yj;jf;fjh?
> 3/ 4k; gpujpthjp ngupy; Vw;gl;l fpuak; bg!;jth eha[L rKjhaj;jpd; ed;ikf;fhf Vw;gl;lJ/
> 4/ ,t;tHf;if elj;j ,e;ePjpkd;wj;jpw;F mjpfhukpy;iyah?
> 5/ ou!;l; xU khiaahdjh? (Whether the trust is illusory)
> 6/ ntW vd;d gupfhuk;?"

18. On the side of the plaintiffs, the second plaintiff, Parthasarathy Naidu was examined as PW1, and the third plaintiff, Dayalan was examined as PW2. Ex.P1 to Ex.P51 were marked. On the side of the defendants, the third defendant, Rajagopal was examined as DW1 and the fourth defendant M.Jawaharlal Bohra was examined as DW2. On the side of defendants, Ex.D1 to Ex.D27 were marked.

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19.On consideration of the oral and documentary evidences, the learned Trial Judge came to a conclusion that the suit deserves to be decreed and accordingly granted the decree.

20.Aggrieved by the same, the 4th defendant preferred an appeal to the file of the learned Subordinate Judge at Kancheepuram. This appeal was received as A.S.No.72 of 1997. Pending the appeal, the 4th defendant passed away. Hence, his legal heirs were impleaded as appellants 2 to 8. On a re-appreciation of the oral and documentary evidences let in by both parties, the learned Subordinate Judge, Kancheepuram, by a judgment dated 28.02.2017, came to a conclusion that the appeal deserves dismissal and accordingly, he dismissed the appeal. Hence, the present second appeal.

21.This second appeal was admitted on 27.02.2018 on the following substantial questions of law:-

> *"a.Whether the trial Court which is the District Munsif Court, Kancheepuram has got any jurisdiction to entertain the suit relating to a Trust and which of public nature still proceed with the suit?*
>
> *b.Can a suit which could fall within the ambit of Section 92 C.P.C be proceeded without leave of the*

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Court of competent jurisdiction in terms of Section 92 of C.P.C?

c.Whether the dispute relating to a public trust could be preferred in terms of Section 34 of the Specific Relief Act than in preferring the same in terms of Section 92(h) of C.P.C?

d.Whether the Courts below are correct in ignoring the mandatory provision of Section 92(h) C.P.C which is a residuary provision, which could cover the details and the prayers of the suit and yet by ignoring the same whether the suit of such a nature could be decided by the District Munsif?

e.The suit as such tried by the District Munsif Court since lacks jurisdiction is competent to pass any decree in the suit?"

22. When this appeal was taken up for hearing, Mr.N.Manokaran suggested the following additional substantial questions of law for consideration:-

"*1.Whether the Courts below are right in invalidating the registered sale deed dated 31.05.1976 (Ex.A13 = Ex.B23) executed by the defendants 1 to 3 along with four others as the office bearers of Kancheepuram Vattara Besthava Naidu Sangam, particularly in the absence of any pleadings as required under Order 6 Rule 4 CPC?*

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2.Have not the Courts below erred in declaring the sale deed dated 31.05.1976 (Ex.A13 = Ex.B23) as not binding upon the plaintiff community, in the absence of the Kancheepuram Vattara Besthava Naidu Sangam and four other office bearers who were the executants therein as as the defendants as per Bye-law (Ex.B21) framed in compliance with Section 6 of the Societies Registration Act, 1860?

3.When the sale under Ex.A13 = Ex.B23 is for the benefit of the property of the society, whether the Courts below are right in declaring the said sale deed as not valid, in the absence of any evidence for undervaluation?

4.Whether the plaintiffs are legally entitled to maintain the suit in a representative capacity, particularly when the mandate of Order 1 Rule 8 CPC r/w Rule 13 of CRP and the paper publication as required in Form 10 has not been complied with in letter and spirit of law?

5.Whether the Courts below are correct in granting the discretionary relief of declaration to the plaintiffs, particularly when the conduct of the plaintiffs from the evidence on record would disentitle them to get a decree of declaration and possession?

6.Have not the Courts below erred in placing negative burden on the defendants, when the burden of proof always lies upon the plaintiffs to establish a

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case for getting a declaration and possession, not on the basis of the weakness if any, of the case set up by the defendants?"

23. Mr.N.Manokaran argued as follows:

(i) The procedure contemplated under Order 1 Rule 8(2) read with the Civil Rules of Practice had not been followed in the present case. Publication had not been effected as required by law and therefore, the suit is bad.

(2) Though an order was passed on 21.02.1994 for effecting publication in I.A.No.462 of 1986, it had not been followed up as required under law.

(3) The society, which had alienated the property in favour of the fourth defendant of which the defendants 1 to 3 were office bearers, has not been made as a party to the suit and hence, the suit has to fail.

(4) The second plaintiff is in occupation of a portion of the land and he had attempted to settle the matter by approaching one Ethirajulu Naidu, a mutual friend of the plaintiffs and defendants 1 to 3, for settlement. When that did not fructify, the plaintiffs took the documents of the defendants which had been handed over to Ethirajulu Naidu and had presented the suit. This shows that the motive of the plaintiffs is improper.

(5) The plaintiffs have not discharged their initial burden. No evidence or pleading is available as required under Order 6 Rule 4 of the Code.

(6) There are no material facts or cause of action pleaded by the plaintiffs.

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(7) Reasoning of the courts below are improper.

24. Taking these arguments further, Mr.N.Jothi argued that allowing of the amendment application and thereby, amending the cause title from Besthava Naidu Community represented by Chingleput District Besthava Naidu Samuga Sangam to Besthava Naidu Community represented by the plaintiffs 1 to 4 is illegal. He urges that the court below ought not to have permitted the amendment in I.A.No.461 of 1986. He states so because, in the original plaint, the wrong cause title reads as if the community is represented by the society, whereas in the body of the plaint, it is denominated as if the community property is being managed by the heads of the community.

25. Mr.N.Jothi points out that after the society of which the defendants 1 to 3 were office bearers was formed, this society alienated the property in favour of the fourth defendant. This alienation was ratified by the general body of the society subsequently. He states that the fourth defendant is a bonafide purchaser for the value of the property, who had gone through the records and thereafter, this court has to come to a conclusion that alienation made in his favour was just and proper. He read extensively from the evidence of the parties to point out that as to how the community property became a trust property had not been demonstrated. Referring to Sections 5 and 6 of the Trust Act, he points

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out that every private trust property requires registration when it relates to an immovable property. Furthermore, as to how this Besthava Naidu Community Trust was vested with the property of the Chingleput Besthava Naidu Samuga Sangam has not been shown. Mr.N.Jothi argued that Section 92 is applicable and thereby, the learned District Munsif has no jurisdiction.

26. In an attempt to torpedo these arguments, Mr.Y.Jyothish Chander argued that the trust property is meant for the benefit of the members of Besthava Naidu Community. The defendants had been the trustees of the property for a very long period of time. They formed a society in order to alienate the property in favour of the fourth defendant, even though there was no necessity for such alienation. He pointed out to the quick succession in which the alienation came to be done. On 29.05.1976, the society was formed, on 30.05.1976, the property had been sold to the fourth defendant and a resolution was passed on 31.05.1976 ratifying the sale. Immediately on coming to know of the above, the plaintiffs issued a suit notice was issued on 06.08.1976.

27. Mr.Y.Jyothish Chander pointed out that Mr.N.Jothi cannot argue that there is no trust as the fourth defendant in his reply notice under Ex.A17 had conceded the existence of a trust. Similarly, he pointed out from the written

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statement of all the defendants that it is clear they have admitted that the property is a trust property. Insofar as amendment is concerned, he pointed out that the amendment had been sought for in I.A.No.461 of 1986. It had been allowed by the trial court on 07.08.1992. This order had been challenged before this Court in CRP.No.1876 of 1993 and the challenge came to be rebuffed. Hence, he urged the said issue cannot be agitated in this appeal.

28. Making light of the arguments of Mr.N.Jothi that the word “firm” had been used, Mr.Y.Jyothish Chander points out that it was only a mistake because the original of the plaint refers to Registrar of assurances of Chingleput Besthava Sangam. He relies Ex.A6, Ex.A7, Ex.A8, Ex.A9 and Ex.A10 to argue that from 1920, through the inam abolition proceedings and thereafter, the property was considered as trust property and titled as “Besthava Mandapam Trust”. He points out, under Ex.B4, Perumal Naidu / the second defendant had acted as a Dharmakartha of the Besthava Mandapam Trust and today, it is not open to Mr.N.Jothi to argue that there is no trust at all.

29. Mr.Y.Jyothish Chander refers to the evidence of DW1 - the third defendant to point out that he had conceded that the community used to appoint persons to manage the property and that the society had been formed only for the purpose of alienation. Further, the alienees before the alienation had not

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even verified the value of the property. The plea that the alienation was necessitated for the purpose of construction of a compound wall for the remaining property of the trust and for repairing of the Mandagapadi structure is a false one, as the evidence of DW1 points out that no such activity was ever carried on.

30. Mr.Y.Jyothish Chander stated that the argument of Mr.N.Manokaran that no publication had been effected is erroneous. He further points out that the defendants 1 to 3 had preferred a regular appeal against the judgment and decree of the trial court in A.S.No.24 of 1998, on the file of the learned Subordinate Judge at Kancheepuram. This appeal had been dismissed for default on 18.07.1992. Thereafter, it was not prosecuted at all. He states that Section 92 of the Code of Civil Procedure is inapplicable and that the relief sought for by the plaintiffs does not come within the four corners of Section 92.

31. With respect to the argument that there is no plea as required under Order 6 Rule 4 of the Code, Mr.Y.Jyothish Chander states that Mr.N.Manokaran has not appreciated the plea of the plaintiffs in proper perspective. He argued a case of fraud has not been alleged by the plaintiffs, requiring the pleas under Order 6 Rule 4 of the Code. He states the specific plea of the plaintiffs is that the property never vested with the society which alienated the property to the

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fourth defendant. It is a question of title of the society to alienate the property in favour of the fourth defendant and not a case of fraudulent alienation of the property by the proper owner. Consequently, he seeks for dismissal of the appeal.

32. I have heard the submissions made on all side. I have also perused the materials on record.

33. Let me consider the arguments one by one.

34. The first submission is that the suit is not maintainable as it had been presented as an ordinary suit and not under the special provision of Section 92 of the Code. It is the argument of Mr.Y.Jyothish Chander that the property belongs to a private trust consisting of members of the Besthava Naidu Community and therefore, Section 92 is not applicable. I am not in a position to agree with the said submission.

35. The Supreme Court has laid down several tests that a court has to apply to conclude as to whether a trust is a public trust or private trust. In ***Deoki Nandan v. Muralidar and others, AIR 1957 SC 133*** and ***Mahant Ram Saroop Dasji Vs. S.P.Sahi and Others, AIR 1959 SC 951,*** the court pointed out that the

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true indicator as to whether the trust is a public trust or a private trust is who holds the beneficial interest of the trust. In case of a private trust, the beneficiaries are definite and ascertained individuals. This means that the trust deed specifically names them or at any given point of time, they can be identified as belonging to a defined group. Insofar as public trusts are concerned, the beneficiaries are unascertained, shifting and fluctuating body of persons. The Supreme Court pointed out that the trust does not need to be for the benefit of the general public at large to be considered as a public trust. If the trust benefits a considerable portion or a specific section of the public answering a particular description, it remains a public trust. The crucial test is whether within the specific section of the public, the individuals continue to remain unascertained and fluctuating.

36. Applying these tests to the facts of the present case, it is the case of the plaintiffs that the property was held for the benefit of Besthava Naidu Community by defendants 1 to 3. Under such circumstances, it is clear that the beneficiaries are unascertainable and shifting at all points of time. Therefore, the argument that it is a private trust and not a public trust deserves rejection.

37. Having rejected this argument, it is not necessary to go into the argument of Mr.N.Jothi that Sections 5 and 6 of the Indian Trust Act require

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registration of trust. The preamble and Section 1 of the Indian Trust Act state, the Act will apply only to private trusts. As this is a case of public trust, the said legislation is inapplicable.

38. Turning to the points on which this second appeal had been admitted, it has to be seen whether the suit, as framed, is maintainable or whether it should have been instituted before the jurisdictional court empowered to deal with suits under Section 92 of the Code.

39. The gist of the suit is that a few members of the Besthava Naidu Community have joined together and have filed a suit for declaration that the sale deed executed by defendants 1 to 3 in favour of the fourth defendant is null and void and for delivery of possession of the property. Can it be said this suit falls within the scope of Section 92? I am of the view that it does not.

40. Section 92 applies to public charities and trust. Both may be either express or constructive. The trust in question is a public trust has been settled in the earlier portion of this judgment. It is not necessary that all suits relating to a public trust should be presented only under Section 92. Section 92 calls upon the parties to invoke the provision only under specific circumstances. They are:

(i) for appointment and removal of trustees;

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(ii) for vesting any property in a trustee;

(ii) for accounts and inquiries; and

(iii) for settling the scheme of management, etc.,

The suit for declaration that the sale deed is null and void falls outside the scope of Section 92 of the Code.

41. Furthermore, the prayer under clause (ii) shows that the suit has been filed against a third party purchaser who is in possession of the property. This is a suit to enforce property rights of the community against a rank outsider like the fourth defendant. It has nothing to do with the internal administration of the Besthava Naidu Community Trust.

42. I have merely restated the principles laid down by the Supreme Court in ***Mahant Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narshibhai and Others, AIR 1952 SC 143,*** which has been recently approved by a Three Judges Bench of the Supreme Court in ***The Jamia Masjid v. Sri K.V.Rudrappa, 2021 INSC 528.***

43. As clause (i) of the prayer falls outside the scope of Sections 92(1)(a) to 92(1)(h) of the Code of Civil Procedure and since the second portion of the prayer is a suit against a stranger purchaser of the trust property, I am not in a

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position to agree with Mr.N.Jothi that this is a suit in nature of Section 92 of the Code and therefore, the learned District Munsif had no jurisdiction. This court comes to a conclusion that it is not a suit under Section 92 and the suit had rightly been presented invoking Section 32 of the Specific Relief Act read with Order VII Rule 1 of the Code.

44. Moving to the next point urged by Mr.N.Manokaran that the suit has to fail on account of non-compliance with Order I Rule 8 is concerned, I should point out that this was not a plea taken by the defendants initially, but being a pure question of law, I permitted the parties to address the same.

45. It is the plea of Mr.N.Manokaran that the plaintiffs had not complied with the requirements of Order I Rule 8 of the Code. Therefore, the suit has to fail. On the contrary, it is the argument of Mr.Y.Jyothish Chander that it has in fact been complied with. Therefore, I had directed the learned Subordinate Judge at Kancheepuram to send the entire records relating to I.A.No.462 of 1986 for the purpose of answering this issue.

46. The records were received and I have gone through the same. The records show that the plaintiffs 1 to 3 had filed an application seeking permission under Order I Rule 8 of the Code. This was numbered as I.A.No.462

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of 1986. The specific prayer sought for in this application was to grant permission to the petitioners/plaintiffs to sue in a representative capacity on behalf of the Besthava Naidu Community. Notice had been order in this application. The second defendant had filed a counter. In this counter, it was not denied that the petitioners belonged to the Besthava Naidu Community, rather it was claimed that they did not represent the community in Chengalpattu District as a whole. It was further pointed out that if at all the petitioners have got any right, they only have to approach the authorities under the HR & CE Act or file a suit under Section 92 of the Code. The appellant herein also filed a counter. In the said counter, the averments were more or less similar to those taken by the second defendant.

47. After a detailed contest, the learned Subordinate Judge at Kancheepuram allowed the application under Order I Rule 8 on 21.02.1994. As there was no reference to the publication in the order, Mr.N.Manokaran had been emboldened to make a submission that no publication had been effected. However, a perusal of the records shows that the publication under Order I Rule 8 had in fact been made in one issue of "*Makkal Kural*" on 06.02.1988. Therefore, the exhaustive submission of Mr.N.Manokaran that as publication had not been effected, the suit has to fail does not deserve any consideration. This is because factually in this case, publication had been effected.

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48. Apart from this, I should point out that it is not in dispute that the plaintiffs herein are the members of the Besthava Naidu Community. In such circumstances, it is not necessary that the suit has to be preceded by an application under Order I Rule 8.

49. I am not furrowing into new grounds but merely referring to the settled position of law laid down by the Supreme Court in ***Kalyan Singh v. Chhoti and Others, AIR 1990 SC 396***. The dispute in the appeal before the Supreme Court arose with respect to the immovable property called Baghichi Darjian. The plaintiff claimed that the property belonged to the local darjees or tailor community. An issue that the Supreme Court were specifically called upon to answer was whether the suit presented by the plaintiff Kalyan Singh is maintainable or not. Justice K.Jagannatha Shetty, speaking for himself, Justice Sabyasachi Mukharji and Justice A.M.Ahmadi (as their lordships then were), answered that any member of a community may successfully bring a suit to assert his right in the community property or for protecting such property by seeking removal of encroachment therein. He further added that such suits need not comply with the requirements of Order I Rule 8 of the Code. The view expressed in this judgment has been recently applied by the very court in ***Hari Ram v. Jyoti Prasad and Another, AIR 2011 SC 952***.

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50. Applying this judgment to the facts of the present case, I have to conclude that the submission made by Mr.N.Manokaran deserves rejection on this point also. To reiterate, it is not in dispute that the plaintiffs are the members of the Besthava Naidu Community and the present suit is for declaration that the sale made by the defendants 1 to 3 in favour of the fourth defendant is void and for recovery of possession. In other words, the plaintiffs are fighting for and on behalf of the community to recover the property which belongs to it. Hence, this point is rejected on the following grounds:

(i) Publication had in fact been made in IA.No.462 of 1986 in OS.No.92 of 1983 and therefore, there has been full compliance of Order I Rule 8 of the Code.

(ii) Even otherwise, as the plaintiffs are the members of the community and have filed a suit to protect the community property, they are entitled to maintain the suit without the leave under Order I Rule 8 of the Code.

51. At this stage, I should also refer to judgments of the Punjab and Haryana High Court. Consistently, that court has taken a view that in a suit presented under the representative capacity, the challenge that the suit has not complied with all the requirement of Order I Rule 8 is not open to all the parties. The courts have held that an objection regarding non-compliance, or

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improper compliance of Order I Rule 8 is available only to those individuals who are not arrayed as parties in the suit and are adversely affected if a decree is granted without hearing them. The courts further held that the defendants, who have been served with the notice and actively participated in the proceedings, cannot rely upon the non-compliance of the procedural requirements in order to get the suit defeated. The courts came to this conclusion on account of the fact that the party so objecting had full opportunity to defend their interests and that the attempt to challenge the non-compliance of Order I rule 8 at a later stage is nothing but a delaying tactics. Order I Rule 8 being a procedural law, the courts held that the technical rules should not be used to defeat substantive rights especially, when the parties have not suffered any prejudice on account of alleged non compliance. (See,

(i) ***Telu and Others v. Kurdia and Another, PLR (1987) 92 P & H 13;***

(ii) ***Amarjit Singh and Others v. Darshan Singh Mahoon and Others, PLR (1979) 81 P & H 386***; and

(iii)***Rulda Ram v. Barkat Ali, PLR (2008) 151 P & H 801***).

Therefore, even on this ground the objection raised by Mr.N.Manokaran has to fail.

52. I move on to the next point raised by Mr.N.Manokaran that the society under the name and style of “Besthava Naidu Sangam” has not been impleaded as a party to the suit. A careful perusal of the written statement and

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the amended written statement shows that this plea was never taken before the trial court or the lower appellate court. Immediately, a question arises whether this objection can be raised at the second appellate stage. I will refer to Order I Rule 13 of the Code. This provision states that all objections with respect to non-joinder or misjoinder should be taken at the earliest possible opportunity and in all cases where issues have been settled at or before such settlement, unless the ground of objection has subsequently arisen. The provision also declares that in case no such objection is taken at the earliest opportunity or where issues have been settled, such pleas are deemed to have been waived.

53. At this stage, I will refer to a Division Bench Judgment of the Patna High Court in ***Jagdish Chandra Sinha v. Dr.Kameshwar Singh, AIR 1953 Pat 178***. Justice Sarjoo Prosad, applying Order I Rule 13 held that it is of utmost importance to raise the objection as regards the frame of the suit on account of defect of parties at the earliest possible opportunity. Such objections should also give the names of persons omitted, so as to enable the other side to do the needful. In case such an objection is not raised at that stage, it would deemed to be waived and it is not open to raise the plea later. This view of the Division Bench had been followed by the very same court in ***Lakhi Prasad Fogla v. Murlidhar Marwari and Others, AIR 1973 PAT 250***.

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54. Apart from that, I should point out that Section 99 of the Code provides that no decree can be reversed, substantially varied or remanded merely on the ground of any misjoinder or non-joinder of parties, etc. The only exception being that it does not apply to a non-joinder of a necessary party. As to who is a necessary or proper party is settled by the Supreme Court in a plethora of cases. To reiterate the settled principle, necessary party is a person who ought to be joined as a party and in whose absence no effective decree can be passed. A proper party is one whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute, though he or she may not be a person in whose favour or against whom the decree is to be made.

55. It has to be seen whether the society, which alienated the property in favour of the fourth defendant, is a necessary party in the first place for it to take the benefit of proviso appended to Section 99 or whether it is a mere will-o'-the-wisp argument. A perusal of the plaint shows that the claim of the plaintiffs is that the defendants 1 to 3 were managing the properties of the Besthava Naidu Trust as trustees. Without necessity or obtaining legal sanction, they had alienated the property in favour of the fourth defendant. It is not a case where the plaintiffs conceded a right in favour of the society which alienated the property in favour of the fourth defendant. Even in the absence of society being

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made as a party, the court can still effectively grant a decree, since the issue that has to be answered is whether the defendants 1 to 3 could have alienated the property in favour of the fourth defendant and if not, whether the fourth defendant can continue to be in possession of the property. For the said purpose, the society, which alienated the property in favour of the fourth defendant, cannot be treated as a proper party.

56. Apart from this issue, there is yet another aspect which stares at the face of Mr.N.Manokaran. The issue being whether the society is a body corporate, having a separate juristic personality. In simple terms, whether it is a legal person. Juristic person connotes the recognition of an entity in law to be a 'person' which otherwise it is not. It is not a natural person but an artificially created person to be recognised as such in law. (See, ***Shiromani Gurdwara Prabandhak Committee, Amritsar v. Som Nath Dass and Others, (2000) 4 SCC 146***).

57. The issue whether a society is a juristic person was specifically gone into by the Supreme Court in ***Illachi Devi and Others v. Jain Society, Protection of Orphans, India and Others, AIR 2003 SC 3397***. It was argued before S.B.Sinha and V.N.Khare, JJ that a Society registered under the Societies Registration Act is a juristic person. After referring to an earlier judgment of the

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Supreme Court in ***Board of Trustees, Arurvedic and Unani Tibia College, Delhi v. State of Delhi and Another, AIR 1962 SC 458,*** S.B.Sinha. J concluded that a society is not a juristic person. The Supreme Court reversed the view of the Patna High Court in ***K.C.Thomas v. R.L.Gadeock and Another, AIR 1970 PAT 163,*** which held to the contrary. Therefore, when the society itself is not a legal person, the plea of Mr.N.Manokaran that it ought to have been impleaded cannot be entertained even for a moment.

58. Turning to the next point as regards the attack made by Mr.N.Jothi on the order allowing amendment application, permitting the plaintiffs who had originally presented the suit as the office bearers of the Chingleput District Besthava Naidu Samooga Sangam, to sue as representing the Besthava Naidu Community is concerned, I have to point out that this was by way of an order passed by the court. Pending the suit, the plaintiffs filed an application in I.A.No.461 of 1986. After contest, this application came to be allowed by the learned Trial Judge by an order dated 07.08.1992. The present appellant did not challenge the order before this Court. However, the first and third defendants presented a revision before this court in CRP.No.1876 of 1993. This court, speaking through Justice K.M.Natarajan, dismissed the revision on 21.12.1993, thereby confirming the order passed by the trial court. The order having been challenged before the High Court, and it having been dismissed, the question

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arises whether it can be raised again by a co-defendant in an appeal against the decree.

59. Once this court has adjudicated the validity of the amendment by dismissing the civil revision petition on merits, that order becomes final. It is binding between the parties for all subsequent stages. The Supreme Court in ***Satyadhyan Ghosal and Others v. Deorajin Debi (SMT) and Another, AIR 1960 SC 941*** held that the principle of *res judicata* applies to successive stages of the same litigation. It pointed out that a matter, which had been decided at the earlier stage by the court, cannot be re-agitated by the parties at a later stage in the same proceedings. On account of dismissal of the revision, the specific issue has attained finality as far as the High Court and the lower courts are concerned. If the petitioners in CRP.No.1876 of 1993 or the appellant who was arrayed as the fourth respondent in that revision had any issues or quarrel with that order, they ought to have challenged the same before the Supreme Court. Having failed to do so in 1993, I am afraid they are not entitled to do so in 2026.

60. Though not specifically argued by Mr.N.Jothi, this court is able to perceive that he seeks the assistance of Section 105(1) of the Code. Section 105(1) permits a party to challenge any interlocutory order which he or she considers erroneous while preferring an appeal against the decree, which has

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been passed finally. However, in the view of this Court, it is not open to the appellant to re-agitate the issue in appeal invoking Section 105(1). This is on account of applicability of *res judicata*.

61. Even assuming *res judicata* does not apply, there is another difficulty in the way of Mr.N.Jothi, i.e., the law of estoppel would operate against him. The fourth defendant had two options as against the order allowing amendment. He could have immediately moved this court by way of a revision along with the defendants 1 and 3. He did not do so. Instead he participated in the proceedings and left the order attain a finality. In the meantime, the co-defendants challenged the said order. This court, after hearing both sides, confirmed the order. This order could have been challenged by the fourth defendant before the Supreme Court. He did not do so. Instead, he participated in the subsequent proceedings under Order I Rule 8 of the Code and thereafter on the merits of the case. He suffered a decree. He did not attack this order even in the appeal filed against the decree of the trial court. Therefore, he is estopped from challenging it for the first time in a second appeal by invoking Section 105(1).

62. I should further point out that I am not sitting on appeal against the order of Justice K.M.Natarajan, who dismissed the civil revision petition. In a

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Second Appeal under Section 100 of the Code, I cannot sit in appeal or review an order passed by another learned Single Judge who had dismissed the revision filed under Section 115 of the Code earlier.

63. This is not a view I am expressing for the first time. I find precedence in ***Kolandayammal v. K.Mani in SA.Nos.1721 and 1858 of 2000*** dated 21.02.2019. Justice P.Rajamanikam was presented with the very same issue. After referring to the following judgments:-

(i) ***Laxminarayan v. Sultan Jehan Begu, AIR 1951 Hyderabad 132***;

(ii) ***Ramsarup Dass and Others v. Pyare Das and Another, AIR 1974 Pat 153***; and

(iii) ***Gurubachan Singh Obeal v. Arya Dharma Sewa Sang, AIR 1981 Pat 318***,

the learned Judge concluded that if any revision is filed challenging an interlocutory order and in that revision, the interlocutory order is confirmed, it is not open to any party to challenge the said interlocutory order in an appeal filed against the decree as it would operate as *res judicata*.

64. This court is alive to the view taken by Justice K.S.Paripooranam in ***Swami Premananda Bharathi v. Swami Yogananda Bharathi and Another,***

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AIR 1985 Kerala 83, whereunder he had interfered with the interlocutory order, despite the same having been confirmed in an earlier revision.

65. The facts of the aforesaid case would have to be referred to show why the judgment is inapplicable. In that case, the trial court had appointed an Advocate Commissioner for the second time, to go into the accounts, without formally setting aside or annulling the report of the earlier Commissioner. This order of the trial court was put in challenge before the Kerala High Court by way of a revision. The said revision was dismissed. The very same plea was raised in an appeal stating that the appointment of the second commissioner, without setting aside the proceedings and report of the first Commissioner, is illegal. The learned Judge, after surveying the authorities, held that whenever a decision is rendered by the court is one outside its authority, the decision is non est in law. Such a non est decision will not operate as *res judicata*.

66. It is a settled position that unless and until an order or a decree passed earlier is by a court of competent jurisdiction, the order cannot operate as *res judicata*. Since the trial court had appointed the Advocate Commissioner for the second time without setting aside the earlier one, Justice K.S.Paripooranam reasoned that it fundamentally lacked the jurisdiction to entertain the second Commissioner's report when the first one was still alive. Consequently, he held

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that it is a nullity in law and therefore, nullity would not attract the principle of *res judicata*.

67. It is not a plea of Mr.N.Jothi that the order passed by the trial court is a nullity. He urges that it is only an erroneous order. Even assuming that it is erroneous, it would operate as *res judicata* between the parties (See, ***Mohanlal Goenka v. Benoy Kishna Mukherjee and Others, AIR 1953 SC 65*** . Therefore, the argument that the order allowing the amendment is erroneous cannot be entertained.

68. Now I will turn to the crucial aspect of the case. A perusal of the documents shows that as early as 1920, the suit had been presented in O.S.No.542 of 1920 with the learned District Munsif at Kancheepuram seeking recovery of possession. The second defendant herein was the first plaintiff therein. He claimed to represent the Besthava Naidu Community. The suit was decreed. It is pertinent to point out that the ejectment suit was filed on the basis of the lease deed dated 25.02.1911 entered into with the defendant therein for and on behalf of the Besthava Community persons. This suit came to be decreed. Thereafter, execution proceedings were initiated by the second defendant as the decree holder and possession was taken by him.

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69. Apart from this, a reading of the written statement shows that the defendants had conceded that the property was originally an Inam property given by the Nawab of Arcot to the Pallaki bearers, who were the ancestors of the defendants. They were managing the property and performing mandahapadi. After sometime, they found that they could not perform the rituals on their own. Therefore, they included the other members of the Besthava Naidu Community to perform the religious activities along with them.

70. With the passage of time, the community started managing the property. Despite the same, during the proceedings under Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, under Ex.A8, a patta was granted in the favour of the second defendant for the property situated in S.No.1751/1 to 1751/6. The settlement authority declared that S.No.1751/1 should be treated as *Mandapam Poromboke*. Aggrieved by the same, the second defendant filed a civil miscellaneous appeal before the Minor Inam Abolition Tribunal in CMA.No.87 of 1968 (Ex.A9). He had successfully argued that the property is a community property and not his personal property. Accepting this plea, the appeal was allowed and remanded.

71. Post the remand, patta was granted in the name of “Besthava Madapam Trust” for the property situated in S.No.1751/1, 1751/3, 1751/4 and

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to 1751/5. All these documents point out that at least for 50 years before the presentation of this suit, in 1979, the property had been treated only as property belonging to Besthava Naidu Community.

72. The evidence of DW1, who is the third defendant, also shows that only 12 persons had participated in the meeting held on 20.05.1976, whereunder a decision was taken to incorporate the Besthava Naidu Sangam. He also categorically admitted that there is no proof that the property was transferred from the community to the Sangam or that the property belonged to Sangam itself. The appellant entered the witness box as DW2. He stated that he does not know who is the owner. He claimed that he entered into an agreement but no agreement had been produced.

73. A reading of the written statement shows that it is the specific case of the defendants that the property belongs to the Besthava Naidu Community. However, they pleaded that the Sangam was created by the community members for the purpose of alienation. It is also clear from the evidence that the defendants had taken opinion from a local lawyer and only thereafter, formed the Sangam to alienate the property. The fourth defendant also, in his written statement conceded that the property belongs to the Besthava Naidu Community.

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74. This court had found earlier that the beneficiaries of the trust are innumerable and not fixed as it is a public trust. The property, belonging to the public trust, cannot be alienated at the will and pleasure of the trustees. It is the duty of the trustees to show that legal necessity or that the alienation was for the benefit of the trust.

75. Prior permission would have to be obtained from the court for the purpose of alienation. This could have been done only by moving the court under Section 92 of the Code. This mode was not adopted. Instead, taking advice from a lawyer, the property had been sold by creating a Sangam. Unless and until the property of the trust vested with the Sangam, Sangam will not have a right to alienate. No document has been produced by the defendants to show as to how the Sangam got the right over the suit schedule mentioned property. Right from the time of Romans, the principle is '*nemo dat quod non habet*' – no one can give what he does not have. Sangam, not having a right over the property, could not have executed a sale deed in favour of the fourth defendant.

76. The Sangam is an utter stranger to the trust property. In fact, what is surprising is a quick manner in which the property came to be sold. The society itself was formed on 29.05.1976, and by 31.05.1976, the property had been

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sold, the sale deed had been registered and the ratification resolution was passed. The Supreme Court in ***R.Venugopala Naidu and Others v. Venkatarayulu Charities and Others, 1989 INSC 329,*** following its earlier verdict in ***Chenchu Rami Reddy and Another v. Government of Andhra Pradesh and Others, (1986) 3 SCC 391*** declared that the property of religious and charitable endowment institutions must be zealously protected because large segment of the community has a beneficial interest therein. It pointed out that sale by private negotiation, which are not visible to the public eye, as in the present case, gives rise to suspicion, should not be permitted unless there exists special reasons to justify the same. In this case, no special circumstance has been pleaded, let alone shown to exist. When such is the position, the device adopted by the defendants 1 to 3 in forming the Sangam merely for the purpose of alienation of the property cannot be held to be valid in the eye of law.

77. The substantial questions of law are answered as follows:

Substantial Questions a to e dated 27.02.2018

The answer to these questions is that as the frame of the suit does not come within the scope of Section 92(1)(a) to 92(1)(h), the suit has rightly been presented under Order VII Rule 1 of the Code read with Section 34 of the

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Specific Relief Act. The suit does not attract any of the requirements of Section 92. Therefore, these questions of law are answered against the appellant.

Additional Substantial Question of Law No.1

When the suit is predicated on the ground that the defendants 1 to 3 could not have alienated the trust property by forming the society, the requirement to plead in terms of Order VI Rule 4 does not arise. Hence, this question of law is irrelevant.

Additional Substantial Question of Law No.2

When there is no transfer of suit property from the Besthava Naidu Community to Kancheepuram Vattara Besthava Naidu Sangam and when the property had not vested with Kancheepuram Vattara Besthava Naidu Sangam, the courts below were right in declaring the sale deed is null and void and not binding on the community.

Additional Substantial Question of Law No.3

When the property does not belong to the society but to the community, alienation by the society attracts principle of *nemo dat quod non habet*. The fourth respondent purchased the property from the persons who did not have

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title to the same and therefore, the declaration granted by the courts below is perfectly right.

Additional Substantial Question of Law No.4

This substantial question of law does not arise for consideration as proper publication had been effected by the plaintiffs in one issue of "*Makkal Kural*" on 06.02.1988. Therefore, there has been complete compliance with the requirement of Order I Rule 8 of the Code, Rule 13 of the Civil Rules of Practice and Form 10 appended therein.

Additional Substantial Question of Law No.5

When the plaintiffs have proved that they belonged to Besthava Naidu Community and when the property belonged to said community, following the dictum of the Supreme Court in ***Kalyan Singh***'s case and in ***Hari Ram***'s case, the courts below did not err in decreeing the suit as prayed for.

Additional Substantial Question of Law No.6

This issue does not arise as the onus to prove that the validity of the sale deed had been shifted to the defendants only after the plaintiffs had substantially proved by way of series of documents commencing from 1920 onwards that the

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property belongs to the community and the alienation was from an entity which did not have any title to the property.

78. In the light of the above discussions, the second appeal is dismissed. The judgment and decree of the learned Subordinate Court, Kancheepuram in A.S.No.72 of 1997 dated 28.02.2017 and the judgment and decree of the learned Principal District Munsif, Kancheepuram in O.S.No.43 of 1996 dated 23.04.1997 are confirmed. The plaintiffs will be entitled to costs throughout. The connected miscellaneous petition is closed.

11.11.2026

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Index:Yes/No
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Internet:Yes
Neutral Citation:Yes/No

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To

1. The District Munsif, Kancheepuram

2. The Subordinate Judge, Kancheepuram

3. The Section Officer,

VR Section, High Court of Madras.

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V.LAKSHMINARAYANAN J.

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