

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6506 of 2015 (O/M)
Date of decision : 1.10.2015

Kavita Khandari

..... Revisionist

Versus

Anil Kumar Kakkar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Rajesh Arora, Advocate, for the revisionist.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH J. (ORAL)

Impugned in the present revision is the order dated 5.1.2015 (Annexure-P-9), passed by the learned Additional District Judge, Kurukshetra, vide which the application for revocation of the permission granted under Section 92 of Code of Civil Procedure, 1908 (CPC), moved by defendant No. 3/present revisionist, was dismissed.

I have heard the learned counsel for the revisionist and have also carefully gone through the file.

Briefly stated, a suit was instituted on 19.5.2011. Alongwith the plaint, an application was moved under Section 92 (1) of CPC for grant of leave to file the suit. The leave was granted on the same day and the notice of the suit was issued to the

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defendants. The present revisionist was initially proceeded against ex-parte and now the ex-parte proceedings have been set aside. Her prayer is that permission granted under Section 92 of CPC should be revoked. It is contended that the Trust is not for charitable purpose. It is a private Trust and that this matter is required to be determined first.

I am of the view that under Section 92 CPC, a suit can only be instituted with the leave of the Court. The leave has been granted. If the defendant pleads that it is a private Trust and not a charitable Trust, it is always open to the revisionist/defendant No. 3 to take objections in this regard. The nature of the Trust can only be determined after the recording of evidence. Once the objection is taken, the lower Court will frame issue in this regard and decide the same alongwith the other issues. The prayer of the learned counsel for the revisionist that such issue should be decided as preliminary issue is also not convincing since in this case, the evidence is required to determine the nature of the Trust regarding its objects and functioning. If the present revisionist/defendant No. 3 feels that the suit is frivolous, it is always open to her to claim compensatory costs under Section 35-A of CPC. Therefore, there is no ground to interfere in the impugned order.

Learned counsel for the revisionist has relied upon the authority of the Hon'ble Supreme Court in Vidyodaya Trust and

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others Versus Mohan Prasad R. and others, 2006 (4) RCR (Civil)

778 as well as authority of this Court in Gaurav Saini and others

Versus Manav Samaj Kalyan Kendra Bharat Branch and others,

2010 (4) RCR (Civil) 178.

The said authorities do not lay down any law that in such cases, the lower Court must frame preliminary issue.

In view of the above, the present revision stands dismissed.

(KULDIP SINGH)
JUDGE

1.10.2015
sjks