

**THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 7555 of 2012 (O&M)
Date of decision: July 7, 2015

Parmod Kumar and another

...Petitioners

Versus

Anand Basia and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. AK Goel, Advocate,
for the petitioner.

Mr. CB Goel, Advocate,
for respondents No. 1 to 3.

K. KANNAN, J. (Oral)

1. The revision petition is against the order rejecting a prayer for grant of relief under Section 92 of the Code of Civil Procedure (hereinafter referred to as **“the Code”**) that contains a prayer to set aside the sale executed by defendants No. 4 to 26 in favour of defendants No. 1 to 3. The petition has been filed on an assertion that the suit property is a Dharamshala created for public purposes of a charitable trust in which the applicants have an interest. The suit was brought at the time when there was an attempt to demolish the Dharamshala and alienate the property. It would appear from the prayer sought in the petition that there have also been sale of the property and the plaintiffs, therefore, would seek for the

relief that the sale deed executed on 15.7.2011 in favour of defendants No. 1

to 3 is null and void with the relief of permanent injunction from alienating the Dharamshala to any person on the basis of the sale deed.

2. The defendants entered contest on the application to contend that there was no permanent dedication to any public charity and the properties did not belong to any public trust. The plaintiffs, therefore, relied on the proceedings initiated by the representatives of the trust before the Rent Controller describing the property as Dharamshala. The respondents would deny that mere description of the property would not amount to admission of the character of the property as such the public trust. The two courts below held that there was no evidence offered to show that the property belongs to the public trust and dismissed the petition.

3. I must observe at the outset that the courts below ought to follow particular procedure which the law expects. Section 92 of the Code requires institution of the suit to be made after a leave is obtained from the court, either on a petition by the Advocate General or by the two persons having interest in the trust. An application for leave must, therefore, be brought along with a plaint that is presented and either the application or the plaint must contain the details of the reliefs which could be granted by the court that are set out in Section 92 (a) to (h). The decree that would be ultimately passed would, therefore, fall under clauses and they are re-produced as under:-

“92. Public charities.—(1)

xx xx xx

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;

- [(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the persons entitled to the possession of such property;]
- (d) directing accounts and inquiries;
 - (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
 - (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
 - (g) settling a scheme; or
 - (h) granting such further or other relief as the nature of the case may require.”

4. I have examined the copies of the papers submitted before the trial court. The preamble of the plaint reads that it is a suit under Section 92 of the Code for declaration to the following effect:-

“Suit under Section 92 of the Code of Civil Procedure for declaration to the effect hat the registered sale deed dated 15.7.2011 bearing No. 5082 executed by the defendants 4 to 26 in favour of defendants 1 to 3 through their power of attorney as well as themselves of the Dharamshala known as Halwasia Dharamshala situated at Maal Godown Road opposite Railway Station, Bhiwani, bearing unit MC unit No YA 1433 to YA 1452 and YA 1454 to YA 1462 bounded as under:

East : Krishna Colony, Bhiwani

West : Road

North : Property of Vaidan.

South : Krishna Colony, Bhiwani

is null void, illegal, against the law ad facts, unlawful, arbitrary, without any basis and the same is liable to be set aside; with a consequential relief of permanent injunction restraining the defendants 1 to 3, their associates, henchmen, employees etc. from alienating the said Dharamshala to any other person on the basis of the said sale deed and also from changing its nature in any manner, demolishing the same etc. on the basis of the oral as well as documentary evidence:-”

5. The procedure shall be at all times to assign a number to the application and proceed to dispose of the application either granting leave or otherwise. Such an application shall contain reference to the fact that the reliefs set forth under Section 92 of the Code alone are claimed. This becomes essential because the court is required to be satisfied that none of the reliefs in the suit traverse beyond what it could be lawfully grant under Section 92 of the Code. I have already extracted the preamble in the plaint and the reliefs sought in the plaint at the tail end also reproduces the said preamble. The application for grant of permission under Section 92 of the Code also states that it is a suit for declaration and for permanent injunction. This reliefs do not fall within clauses (a) to (h). The petition could not be, therefore, entertained and the petition deserves a dismissal, although for a different ground than what has been brought out before the court below.

6. If an appropriate application were to be filed, the issue will still be, whether relief under Section 92 of the Code could be claimed or not. A court disposing of an application under Section 92 of the Code is only

required to find, whether there are sufficient averments relating to the property as belonging to a public charity and there is any breach of any express or constructive trust created for the public purposes. There is an averment in the plaint that the suit property is known as Dharamshala Halwasia, Bhiwani. It is also stated that it was dedicated by Jai Ram Dass Ram Gopal Halwasia for being used as public charitable and “for staying passengers temporarily and also for being used for the purpose of celebrating festivals and performance of for marriages and for all public purposes.” There is an express averment in para 3 of the plaint that accompanied the application that the plaintiffs are residents adjacent to the Dharamshala and have been using the said property for the purpose of marriages etc. There is, therefore, an averment relating to a public charity and there is an expression of interest by the petitioners as persons who have been using the property for the charitable purpose of marriage etc. These two aspects are sufficient to maintain a petition under Section 92 of the Code. The petitioners were also relying on the fact that in the Rent Controller proceedings relating to the property, the property had been described as Dharamshala. The Dharamshala admits of no ambiguity that it is a public charity. The court was looking for a proof of purpose of charity at the time of consideration of Section 92 which is improper. The court is not expected to decide the suit. The court must only be convinced that the persons who approached the court have placed some material to show that it is a public charitable trust and that they have interest. Such disclosure is available and the court below could not have rejected the petition on the grounds that it has done. The issue of whether the sale could be valid or not can be taken in an independent action by the persons who are competent to

assail the same. Section 92 could be used only for directing accounts and inquiries and can also obtained a declaration of the proportion of the trust property or interest should should be allocated in the interest of the trust. The prayer could also allow for an authorization to sell, mortgage or exchange or to settle a scheme and prayer for setting aside sale cannot come under Section 92 of the Code.

7. While confirming the order passed rejecting the application under Section 92 of the Code, I set aside the finding that the petitioners had no interest or that there was no proof that it was a public charitable trust. This is not to say that this court has upheld the character of the property as public trust. I have gone as far to state that for the purpose of consideration of Section 92 of the Code, the court will only consider the averments in the plaint and the prima facie proof of the plaintiffs' assertion. If the suit has contained a prayer in the suit which was sought to be filed that the relief had contained any of the reliefs which Section 92 provides, I would have no difficulty in allowing for such prayer to be granted by setting aside the order of the court below. Since the petition contains a very fundamental vice of seeking for reliefs which are impermissible under Section 92 of the Code, I decline to interfere and allow for liberty to institute a proper suit in accordance with Section 92 of the Code.

8. The revision petition is dismissed but with the above observations.

July 7, 2015
prem

(K.KANNAN)
JUDGE