IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2977 of 2016 (O&M)
Date of Decision: 16.08.2017

Joginder Kumar and another ... Appellants

Versus

Shri Behari Lal Charitable Trust (Regd.)
and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sudhir Paruthi, Advocate,
for the appellants.

****

RAJIV NARAIN RAINA, J.

1. Two plaintiffs joined together to file a suit under Section 92 of the Code of Civil Procedure, 1908 praying that the trustees of Shri Behari Lal Charitable Trust (Regd.), Railway Road, Ambala Cantt due to mismanagement be removed and new trustees appointed and the existing trustees, the defendants, be directed to deliver the possession of the Trust property known as Prince Hotel, Ambala Cantt. A direction was also sought that the trustees should render true accounts and deposit the income of the trust property derived by the existing trustees to the proposed to be appointed trustees or to appoint a Court Receiver to manage and control the trust property.

2. Section 92 deals with public charities and empowers the Advocate General or two or more persons having an interest in the trust and having obtained the leave of the Court may institute a suit to obtain a decree

MANJU MITTAL
2017.09.14 01:04
I attest to the accuracy and
integrity of this document

in any of the matters enumerated in 2 (a) to (h) of Sub-Section 1 of Section 92 of the Code. The trust must be created for public purposes of a charitable or religious nature.

3. The present appeal has been filed by Joginder Kumar and Ashwani Ghai whereas the suit was filed by four co-plaintiffs. The trust is actually a society registered with the Registrar of Firms and Societies, Haryana, Chandigarh with registration No.59 of May 09, 1959. In the plaint, the plaintiffs state that they are residents of Ambala Cantt and have interest in the trust. What is the nature of the interest each one of them has against the trust is not spelled out. They are obviously outsiders. There may be internal disputes within the defendants whether the Society qualifies as a registered trust or an unregistered one but that is an internal matter for them to resolve and not for the appellants to interfere with.

4. The foremost question which presented itself in the suit from the pleadings was whether the suit was maintainable and whether plaintiffs or the two appellants have sufficient locus standi to file a suit under Section 92 of the Code in the present form. There is no doubt that the learned Judge at Ambala vide order dated February 28, 2001 granted leave to the plaintiffs to maintain the suit for trial.

5. The learned Additional Civil Judge (Senior Division), Ambala who tried the case delivered his judgment dated December 15, 2010 holding that the defendants have sufficiently proved that there is no mismanagement in running the trust property and the accounts of the charitable trust are being maintained in a regular manner in the normal course of business.

6. Against the judgment and decree of the trial Court, plaintiffs

MANJU MITTAL
2017.09.14 01:04
I attest to the accuracy and
integrity of this document

carried appeal to the Additional District Judge, Ambala which have failed.

7. The facts are that Sh. Bihari Lal Jaiswal the founder trustee of the charitable trust executed three Wills in 1926, 1928 and 1934 respectively. He died on April 07, 1934. By the first Will the charitable trust was created by Bihari Lal and 10 trustees which included the President of the Cantonment Board; The Cantonment Magistrate who together managed the affairs of the trust property. The testamentary Will of Bihari Lal Jaiswal executed in 1928 was cancelled by executing the 3rd and last will dated April 06, 1934. The creation of the trust on June 26, 1926 could not be questioned when from the resources of the trust an iron shed etc. were constructed in Rambagh as shelter against rain and also were established, a Hospital and Dharamshala under the name and style of Bihari Lal Charitable Trust.

8. It is not necessary to recount the entire history of the trust in any fine detail. The learned Lower Appellate Court has held that the plaintiffs have no locus to seek remedy under Section 92 of the Code. There is a clause in the constitution of the trust that in case no legal heir or successor-in-interest of the trustee remains alive or there is any legal heir incompetent to manage the affairs of the property, then the trust property shall automatically vest under the control of the President, Cantonment Board and the Cantonment Magistrate. The Cantonment Board and the Cantonment Magistrate were not arrayed as parties to the suit. The plaintiffs are common persons who belong to that area but still have no actionable right to meddle with or seek a take over if the interest of the trustees by replacement and it is only the two remaining successors-in-interest of the trustees who can seek relief under Section 92 of the Code. I would only add

MANJU MITTAL
2017.09.14 01:04
I attest to the accuracy and
integrity of this document

that the plaintiffs appear to be 'meddlesome interlopers' and have no voice to invoke the provisions of Section 92 of the Code to seek removal of trustees and replacing them by new trustees or for Court to appoint Receiver when there is nothing remiss in the internal functioning of the Trust as found by the court of first appeal in the judgment.

9. I find no warrant or cogent ground to interfere with the judgment and decrees of the Courts below. Besides, no question of law, much less substantial arises for consideration of this Court under Section 100 of the CPC or under Section 41 of the Punjab Courts Act, 1918.

10. As a result, the appeal is devoid of merit and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

16.08.2017
manju

Whether speaking/reasoned *Yes*

Whether reportable *No*

MANJU MITTAL
2017.09.14 01:04
I attest to the accuracy and
integrity of this document