

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 29th August, 2017.**

+ **C.R.P. 59/2005**

MOOLCHAND KHARAITI RAM TRUST & ORSPetitioners

Through: Mr. Shanti Bhushan, Sr. Adv. with
Mr. Gaurav Bahl, Adv.

Versus

RAJANI KOTHARI & ORS. Respondents

Through: Mr. N.D. Pancholi & Mr. Amit
Srivastav, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 5th November, 2004 in Suit No.414/2003 of the Court of the Civil Judge, Delhi) allowing the application of the respondents/plaintiffs under Section 92 of CPC and granting leave to the respondents/plaintiffs to institute the suit under Section 92 of CPC.
2. The petition was entertained and notice thereof ordered to be issued.
3. During the pendency of this petition, the suit from which this petition arises, was dismissed in default of appearance of the respondents/plaintiffs and this petition was kept pending awaiting the restoration of the said suit. The suit was restored but this petition continued to languish. Though there is no interim order in this petition staying further proceedings in the suit but the counsels inform that the suit has also not proceeded further.
4. The senior counsel for the petitioners/defendants and the counsel for the respondents/plaintiffs have been heard.

5. The seven respondents/plaintiffs instituted the suit, from which this Revision Petition arises, in the Court of the Senior Civil Judge, Delhi pleading (i) that they have an interest in Shri Moolchand Kharaiti Ram Hospital & Ayurvedic Research Institute i.e. the petitioner/defendant No.1, which is a Trust created for public purposes of charitable nature; (ii) that while the respondents/plaintiffs No.1&2 are social workers and actively engaged in promoting the cause and welfare of poor sections of society, the respondents/plaintiffs No.3 to 6 are employees and office bearers of Moolchand Khairati Ram Hospital and the respondent/plaintiff No.7 is the Union of the employees of the said hospital; (iii) that the petitioner/defendant No.1, a public charitable Trust, had been granted recognition under Section 80G of the Income Tax Act, 1961 and was granted land by the Government of India through Ministry of Rehabilitation at a nominal price for construction of a charitable hospital for the benefit of general public; (iv) that Government of India, Municipal Corporation of Delhi and various other institutions give the hospital set up by the petitioner/defendant No.1, grants, donations and other reliefs from time to time; (v) that the said hospital was providing free indoor and outdoor services to patients and though initially set up to develop ayurvedic system of medicine, in the year 1967 introduced Allopathy and gradually started running on commercial lines in violation of the charitable purpose of the Trust; (vi) that the management of the petitioner/defendant No.1 Trust had been following unfair, anti-people and anti-labour policies and had placed under suspension about 26-27 employees and later on terminated them.

6. For the present purposes, there is no need to elaborate herein further, other facts pleaded in the plaint. Suffice it is to state that the reliefs of (a)

removing the petitioners/defendants No.2 to 6 from the petitioner/defendant No.1 Trust; (b) appointment of new trustees in place of the trustees so removed; (c) vesting of all the properties and assets of the petitioner/defendant No.1 Trust in the newly appointed trustees; (d) directing the petitioners/defendants No.2 to 6 to deliver possession of the Trust property to the new trustees to be so appointed; and, (e) of settling the scheme of management of the petitioner/defendant No.1 Trust, were claimed in the suit.

7. The suit was accompanied with an application under Section 92 of CPC for leave of the Court to institute the suit, inasmuch as Section 92 of CPC entitles either the Advocate General or two or more persons having an interest in the Trust and having obtained the leave of the Court, to institute the suit thereunder.

8. The learned Senior Civil Judge before whom the suit was presented marked it to a Civil Judge.

9. The petitioners/defendants, on service of summons/notice of the suit and the application aforesaid, filed their objections to the application under Section 92 of CPC seeking leave of the Court. One of such objections was, that the suit had not been brought before the competent court.

10. The learned Civil Judge, vide impugned order dated 5th November, 2004, granted leave to the respondents/plaintiffs to institute the suit under Section 92 of CPC reasoning (I) that the suit had been instituted by more than two persons alleging breach of trust and also showing *prima facie* case; (II) that after going through the judgments cited by the counsel for the respondents/plaintiffs and the counsel for the petitioners/defendants, the respondents/plaintiffs were found to be having interest in the Trust and

having *locus standi* to file the suit; (III) that the respondents/plaintiffs had filed a copy of the report of the High Level Committee constituted by Govt. of NCT of Delhi for Hospitals in Delhi to conduct an enquiry and a perusal of the report of the said Committee *prima facie* corroborated the allegations of the respondents/plaintiffs; (IV) that though the said report had been stayed by the Supreme Court but therefrom, a *prima facie* case in favour of the respondents/plaintiffs for grant of leave was found; (V) that though it was also the contention of the petitioners/defendants that the Civil Judge was not the principal Civil Court and not having jurisdiction to entertain and try the suit and that only the Court of the District Judge is empowered to take cognizance of the suit under Section 92 of CPC and had relied on ***Gangagir Chela Vs. Rasal Singh*** AIR 1965 Punjab 472 but the respondents/plaintiffs relied on ***Kt. N. Rm. Thenappa Chettiar Vs. N.S. Kr. Karuppan Chettiar*** AIR 1968 SC 915 wherein the Supreme Court held that suit for breach of trust or mismanagement on the part of trustees can be brought before a Civil Judge; (VI) that similarly, in ***Prithipal Singh Vs. Magh Singh*** AIR 1982 Punjab 137, it was held that the suit under Section 92 of CPC can be instituted both in the principal Civil Court of original jurisdiction as also in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any of the part of the Trust is situated; (VII) that Section 92 of CPC does not envisage that such other Courts are to be empowered by a gazette notification; (VIII) empowering by a gradation and distribution which is prepared and published by the State Government is sufficient compliance; (IX) that when such a list empowers all Sub-ordinate Judges / Civil Judges to try such suits under Section 92 of CPC, then in view of Section 15 of CPC, such suits should be instituted only

in the Court of Sub-ordinate Judges / Civil Judges; (X) that per Section 15 of CPC, every suit can be instituted in the Court of lowest grade competent to try it; (XI) that the respondents/plaintiffs had valued the suit for the purposes of court fees and jurisdiction at Rs.130/-; (XII) that Section 24 of the Punjab Courts Act, 1918 also lays down that the District Court shall be the principal Civil Court of original jurisdiction and as per the Delhi High Court Rules, the Court of the Civil Judge was having original jurisdiction to try the suit valued at Rs.130/-; (XIII) that the petitioner / defendant no.1 Trust is also situated within the jurisdiction of the Civil Judge, Delhi; (XIV) that thus the Court of the Civil Judge has jurisdiction to entertain the present suit.

11. The senior counsel for the petitioners/defendants has contended that his challenge to the order aforesaid is under three heads. Firstly, on the ground that the Court of the Civil Judge is not the principal Civil Court of original jurisdiction insofar as the city of Delhi is concerned. Secondly, that the petitioner/defendant No.1 Trust is not created for public purpose of a charitable or religious nature. Lastly, that the respondents/plaintiffs have no interest in the petitioner/defendant No.1 Trust.

12. The senior counsel for the petitioners/defendants has been requested to confine his submissions initially on the first of the aforesaid three challenges, inasmuch as if the petitioners/defendants are to succeed thereon, then the findings of the learned Civil Judge in the impugned order with respect to the other two aspects would be of a Court having no jurisdiction and of no avail and the need to go into the merits thereof or to set aside the same would not arise. The counsel for the respondents/plaintiffs has also agreed thereto.

13. Section 92 of CPC entitles the Advocate General or two or more persons having an interest in the Trust and having obtained leave of the

Court, to institute the suit thereunder “in the principal Court of original jurisdiction or in any other Court empowered in that behalf by the State Government”.

14. The question thus for adjudication is, whether the Court of the Senior Civil Judge in which the respondents/plaintiffs instituted the suit is the “principal Civil Court of original jurisdiction or any other Court empowered in that behalf by the State Government”.

15. I have invited attention of the counsels to my judgment in ***Rahisuddin Vs. Gambit Leasing & Finance Pvt. Ltd.*** 2011 (176) DLT 696, though in the context of Section 2(1)(e) of the Arbitration & Conciliation Act, 1996. Section 2(1)(e) also defines “Court” as meaning the “principal Civil Court of original jurisdiction in a district”. On an interpretation of the provisions of the CPC and the Punjab Courts Act, 1918 and referring to a host of judgments, it was held that the Court of the Civil Judge is not the ‘principal Civil Court of original jurisdiction in a district’. Though the said Section 2(1)(e) also expressly provides that the word ‘Court’ does not include any Civil Court of a grade inferior to such principal Civil Court and which words are absent in Section 92 of the CPC but the same would still not affect the finding in the said judgment, of the Court of the Civil Judge being not the principal Civil Court of original jurisdiction in a district.

16. I have invited the attention of the counsels to Section 134 of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, 1957 which provide for the suits thereunder to be instituted in a Court “not inferior to a District Court” and “in the District Court” respectively and to ***S. Dharmalinga Nayakar Vs. D. Balasubramania Ayyar*** AIR 1937 Mad 94, ***Everest Pictures Circuit, Salem Vs. S. Karuppannan*** 1981 SCC OnLine Mad 232, ***K.I.***

George Vs. C. Cheriyan AIR 1986 Ker 12, *Citicorp Vs. Todi Investors* 2006 SCC Online Del 1238, *Sanjay Kumar @ Mallu Vs. Manoj Kumar Sahu* 2008 SCC Online All 50 (DB), *Ganga Prasad Rawat Vs. M/s Shivhare Pharmacy, Fatehpur* 2012 SCC OnLine All 115, *Reckitt Benckiser Healthcare India Ltd. Vs. Emami Ltd.* 2015 SCC OnLine Cal 121 and *Guinness World Records Ltd. Vs. Sababbi Mangal* (2010) 230 DLT 377 holding that the words ‘District Court’ means the Court of the District Judge and not the Court of the Senior Civil Judge or the Civil Judge, though also generally counted in the District Court.

17. I may in this regard also mention that the District Court, insofar as the city of Delhi is concerned, on the Civil Side, comprises of the following tiers:

- (A) District Judge;
- (B) Additional District Judge;
- (C) Senior Civil Judge; and,
- (D) Civil Judge

with the maximum pecuniary jurisdiction of the Senior Civil Judge / Civil Judge being upto Rs.3 lakhs and of the District Judge/Additional District Judge being upto Rs.2 crores. Thus, the institution of the suits, valuation whereof for purposes of jurisdiction is upto Rs.3 lakhs is before the Court of Senior Civil Judge, who either keeps the suit with himself or assigns it to the Court of any Civil Judge and of the suits, valuation whereof is more than Rs.3 lakhs but upto Rs.2 crores is before the District Judge, who either keeps the suit with himself or assigns it to any Additional District Judge.

18. The senior counsel for the petitioners/defendants to canvass that the 'principal Civil Court of original jurisdiction' is the Court of the District Judge, has drawn attention to Sections 18, 20, 21, 24 & 30 of the Punjab Courts Act, 1918 which are as under:

***"18. Classes of Courts.-** Besides the Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely :-*

- (1) The Court of District Judge;*
- (2) The Court of Additional District Judge;*
- (3) The Court of Civil Judge (Senior Division); and*
- (4) The Court of Civil Judge (Junior Division)*

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***20. District Judges.-** The State Government shall after consultation with the High Court, appoint as many persons as it thinks necessary to be District Judges, and the High Court shall post one such person to each district as District Judge of that District;*

Provided that the same person may, if the High Court thinks fit, be appointed to be District Judge of two or more districts.

***21. Additional District Judges.-** (1) The State Government may after consultation with the High Court, also appoint as many persons as it thinks necessary to be Additional District Judges, and the High Court may post an Additional District Judge to exercise jurisdiction in one or more courts of the District Judges.*

(2) Additional District Judges shall have jurisdiction to deal with and dispose of such cases only as the High Court, by general or special order, may direct them to deal with and dispose of or as the District Judge of the District may make over to them for being dealt with and disposed of:

Provided that the cases pending with the Additional District Judges immediately before the 28th day of June, 1963, shall be deemed to be cases so directed to be dealt with or disposed of by the High Court or so made over to them by the District Judge of the District as the case may be.

(3) While dealing with and disposing of the cases referred to in sub-section (2), an Additional District Judge shall be deemed to be the Court of the District Judge.

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24. District Court to be principal Civil Court of original jurisdiction.- *The Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the District.*

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30. Exercise by [Civil Judge (Senior Division) and Civil Judge (Junior Division)] of Jurisdiction of District Court in certain proceedings.- *(1) The [High Court] may by general or special order authorise any [Civil Judge (Senior Division) and Civil Judge (Junior Division)] to take cognizance of, or any District Judge to transfer to a [Civil Judge (Senior Division) and Civil Judge (Junior Division)] under his control, any of the proceedings next thereafter mentioned or any class of those proceedings specified in such order.*

(2) The proceedings referred to in sub-section (1) are the following, namely :-

(a) Proceedings under the India Succession Act, 1865 (X of 1865), and the Probate and Administration Act,

1881 (V of 1881), which cannot be disposed of by the District Judge.

(b) [-]

(3) The District Judge may withdraw any such proceedings taken cognizance of by or transferred to a [Civil Judge (Senior Division) and Civil Judge (Junior Division)] and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.

(4) Proceedings taken cognizance of by or transferred to a [Civil Judge (Senior Division) and Civil Judge (Junior Division)] as the case may be under this section shall be disposed of by him, subject to the rules applicable to like proceedings when disposed of by the District Judge.”

19. Though the counsel for respondents / plaintiffs has not so contended but for completeness I may mention that this Court in ***Shafiq Ahmed Vs. Shah Jehan Begam*** 1981 Rajdhani Law Reporter 364 held that the Punjab Courts Act continues to apply to Delhi.

20. Thus, as per the senior counsel for the petitioners/defendants, in terms of Section 24 of the Punjab Courts Act, the Court of the District Judge is deemed to be the District Court or the principal Civil Court of original jurisdiction insofar as the city of Delhi is concerned. Now, of course with the division of Delhi into several Districts, for each of District, the Court of the District Judge is the principal Civil Court of original jurisdiction in that District.

21. However, since in Delhi, vide Section 5 of the Delhi High Court Act, 1966, the High Court of Delhi also exercises ordinary original civil jurisdiction, in suits, value of which exceeds Rs.2 crores, for such suits, the principal Civil Court of original jurisdiction is the High Court of Delhi.

22. The senior counsel for the petitioners / defendants has next referred to ***Kt. N. Rm. Thenappa Chettiar*** supra on which the learned Civil Judge in the impugned order has based his decision and has contended that though the suit under Section 92 of the CPC subject matter thereof was instituted in the Court of the Subordinate Judge in Tiruchirappalli district but there is no discussion in the said judgment on this aspect and the same cannot thus be a precedent for holding that the Court of the Subordinate / Civil Judge is the Principal Civil Court of Original Jurisdiction within the meaning of Section 92 of the CPC.

23. The senior counsel for the petitioners / defendants has then referred to ***Prithipal Singh*** supra of the High Court of Punjab and Haryana also relied upon by the learned Civil Judge in the impugned order and has contended that the finding therein of the Sub-ordinate Judges having jurisdiction to entertain suits under Section 92 of the CPC is based on the gradation and distribution list of officers of the Judicial Department of Punjab issued by the Punjab government and para 7 of which list specifically dealt with the power to hear suits under Section 92 of the CPC and it was mentioned therein that the powers are exercised *ex officio* by all Sub-ordinate Judges in the State of Punjab. It is further pointed out that the contention therein that the gradation list cannot take the place of a specific gazetted notification by the government was negated reasoning that the gradation list and its contents were prepared and approved by the government and it was a government publication and was sufficient proof of the act of empowering by the government of all Sub-ordinate Judges to receive the complaints and try the suits under Section 92 of the CPC. The senior counsel for petitioners / defendants has argued that the finding in this judgment of the Sub-ordinate / Civil

Judges in Punjab being authorised to hear suits under Section 92 CPC is on the basis of empowerment vide gradation and distribution list of officers of Judicial Department of Punjab and not on the basis of the Court of Sub-ordinate / Civil Judge being the principal Civil Court of original jurisdiction.

24. The counsel for the respondents / plaintiffs in this context contends that the list of officers of the Judicial Department aforesaid issued by the Punjab government would apply to Delhi as well. Reliance in this regard is placed on *Radhey Sham Sawhney Vs. Bawa Joginder Singh Bhalla* 1969 (V) DLT 82 (DB) concerned with the entitlement of the Sub-ordinate Judges in Delhi to entertain, try and dispose of suits under Order XXXVII of the CPC and holding that the amendment made in Rule 1 of Order XXXVII of the CPC by the Punjab High Court under Section 122 of the CPC did not, by creation of a separate Delhi High Court, cease to operate in the Courts of the Delhi District Judges and Sub-ordinate Judges in the Union Territory of Delhi and that the amendment made by the Punjab High Court of Rule 1 of Order XXXVII of the CPC cannot be held automatically nullified merely because a separate High Court has been set up for the Union Territory of Delhi.

25. However, closer examination of the said judgment shows that Rule 1 of Order XXXVII of the CPC as amended by the Punjab High Court before the setting up of a separate High Court for the Union Territory of Delhi itself empowered the Sub-ordinate Judges of Delhi province to exercise powers under Order XXXVII of the CPC. However, with respect to empowerment under Section 92 of the CPC of a Court other than the principal Civil Court of original jurisdiction to entertain and try a suit under Section 92 of the CPC, such empowerment has to be by the State Government concerned and the empowerment by the Government of the State of Punjab in the Judicial List

mentioned in *Prithipal Singh* supra was not and would not be empowerment of the Sub-ordinate Judges in Delhi. It is not as if the Judicial List supra was applicable to the Sub-ordinate Judges in the province of Delhi also. Moreover, though the High Court of Punjab till the setting up of High Court of Delhi had jurisdiction over province / Union Territory of Delhi but the government of the State of Punjab did not have jurisdiction over Delhi, to be able to empower any other Court in Delhi to entertain and try suits under Section 92 of the CPC. No merit is thus found in the contention aforesaid of the counsel for the respondents / plaintiffs.

26. The counsel for the respondents / plaintiffs has also referred to Section 7 of the Delhi High Court Act, 1966 which is as under:

“7. **Practice and Procedure in the High Court of Delhi** – Subject to the provisions of this Act, the law in force immediately before the appointed day with respect to practice and procedure in the High Court of Punjab shall with necessary modifications, apply in relation to the High Court of Delhi and accordingly the High Court of Delhi shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the appointed day exercisable by the High Court of Punjab and shall also have powers to make rules and orders with respect to practice and procedure for the exercise of its ordinary original civil jurisdiction:

Provided that any rules or orders which are in force immediately before the appointed day with respect to practice and procedure in the High Court of Punjab shall, until varied or revoked by rules or orders made by the High Court of Delhi, apply with the necessary modifications in relation to practice and procedure in the High Court of Delhi as if made by that High Court.”

and has contended that by virtue thereof, the Judicial List aforesaid of the Punjab Government would govern Delhi as well.

27. I am afraid, not. The application vide the aforesaid provision is only of Rules of practice and procedure applicable to the High Court on its

Judicial Side and would not apply to the acts required to be done by the State Government.

28. The counsel for the respondents / plaintiffs then referred to ***Sri Jeyaram Educational Trust Vs. A.G. Syed Mohideen*** AIR 2010 SC 671 but in which case also there was a notification issued by the Governor of Madras in exercise of powers under Section 92(1) of the CPC, investing all courts of Sub-ordinate Judges in the State of Madras with jurisdiction under CPC in respect of suits relating to trusts created for public purposes of a charitable and religious nature. There is no such notification in the present case.

29. The counsel for the respondents / plaintiffs has next referred to ***M. Ar. Rm. M. Annamalai Chettiar Vs. Al. A.C.T. Solaiyappa Chettiar*** AIR 1935 Madras 983 but which, for the reasons aforesaid, would again have no application as far as the city of Delhi is concerned.

30. The petition thus succeeds and it has thus to be necessarily held that the Court of Civil Judge, Delhi is not a principal Civil Court of original jurisdiction and has not been empowered by the State Government for the purpose of Section 92 of the CPC and was incapable of entertaining the suit under Section 92 and resultantly, incapable of granting leave to the respondents / plaintiffs to institute the suit under Section 92 of the CPC.

31. The need to go into the other contentions urged by the senior counsel for the petitioners / defendants is thus not felt.

32. The counsel for the respondents / plaintiffs states that liberty be granted to the respondents / plaintiffs to institute a fresh suit.

33. Once it is held that the impugned order is not by a Court having jurisdiction to pass the same, the respondents / plaintiffs, in law, would be

entitled to approach the appropriate forum and there is no need for grant of any liberty.

34. Axiomatically, the impugned order dated 5th November, 2004 is set aside and the suit No.414/2013 filed by the respondents / plaintiffs dismissed.

However, no costs.

AUGUST 29, 2017

'bs'/gsr..

(Corrected & released on 3rd October, 2017)

RAJIV SAHAI ENDLAW, J.

