

SAS

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***

***ORDINARY ORIGINAL CIVIL JURISDICTION***

*APPEAL (L) NO.77 OF 2018*  
*IN*  
*NOTICE OF MOTION NO.2094 OF 2009*  
*IN*  
*SUIT NO.1443 OF 2009*  
*WITH*  
*NOTICE OF MOTION (L) NO.125 OF 2018*  
*AND*  
*NOTICE OF MOTION NO.704 OF 2016*

Kishandas (Kishore) Bhagwandas Nagpal & Anr.      ..Appellants.  
V/s.

Rajkumari Asrani & Ors.      ..Respondents.

Mr.Pessi Mody, Senior Advocate with Mr.N.P.Lashkari, Mr.Rumi H. Mirza for the appellants.

Mr.J.P. Sen, Senior Advocate with Mr.Nilesh Mody, Mr.Rachit Thakar i/b. Rustomji Ginwala for respondent No.1.

Mr. Sanjay Jain with Mr.Hemant Shah, Mr.Bharat Jain i/bv. IC Legal for respondent Nos.2 to 4.

Mr.Muttahar Khan with Mr.Paresh Shah i/b. M/s. Shah & Sanghavi for respondent Nos.5 & 6.

***CORAM: NARESH H.PATIL AND  
NITIN W.SAMBRE, JJ.***

***DATE : FEBRUARY 23, 2018***

**PC. (PER NITIN W. SAMBRE, J.)**

This appeal is directed against the order dated January 22, 2018 passed on the Notices of Motion initiated by the appellants and also the respondents whereby the learned Single Judge has appointed administrator in respect of the suit properties with liberty to the parties to raise their grievance in respect of the management of the properties before the administrator. The administrator is directed by the learned Single Judge to take appropriate steps in the matter, including preparation and presentation of reports to the Court seeking directions.

2. The facts in brief for the present appeal are that:-

Late Bhagwandas had two wives, by name Vishender and Kalavantibai. He had formed 9 private trusts in the interest of members of his family. Suit No.1443 of 2009 along with Notice of Motion No.2094 of 2009 was filed by the beneficiaries of the said private trusts seeking distribution of the trust properties and distribution of share of income in accordance to the share in the trust properties.

3. The appellants-defendants opposed the said Notice of

Motion claiming that they are also beneficiaries of the trust properties and as such, are having share in the suit properties. The original defendant Nos.1, 4, 5 and 6 i.e. the present appellant Nos.1 and 2 being defendant Nos.1 and 6 were managing the suit properties in the capacity of trustees.

4. In the Notice of Motion No.2094 of 2009, the plaintiff is seeking interim relief in the capacity of beneficiary, as according to him, the object with which the trust was formed has extinguished.

5. At the ad-interim stage, there was a statement that third party interest will not be created in the suit property.

6. During the pendency of the motions, defendants 1, 4, 5 and 6, who claim to be the managing the trust properties had received an offer agreeing to take flat No.6C in the suit building with an one car parking space on a tenancy basis at a premium of Rs.4.5 crores and a monthly rent of Rs.695.35.

7. It is claimed by the defendants that it was the best offer that was received. As such, Notice of Motion No.704 of 2016 is

taken out for permission to create a tenancy in above terms in respect of the suit property.

8. Heard the learned senior counsel for the appellants. While questioning the aforesaid order of appointing an administrator, Mr.Mody, learned senior counsel for the appellants would urge that out of the total 9 trusts, purpose of 6 private trusts have extinguished. In view of the common interests in the suit properties, the suit properties of the trust stands amalgamated and are being administered by the appellants. According to him, the income from the trust properties is the only source of their maintenance as they are in advanced age and unable to maintain themselves. He would then submit that the other three trusts are still existing and the beneficiaries of the said three trusts are entitled to enjoy the properties. According to him, various objects with which the trusts were created is given a complete go-by by the learned Single Judge while passing the order impugned. He would then submit that the interest of the present appellants is also not addressed by the learned Single Judge, the appellants being the beneficiaries of the suit / trust properties. He would then

urge that the order impugned warrants interference.

9. *Per contra*, Mr.Sen, the learned senior counsel for the respondent-original plaintiff supports the order. The said contentions are further adopted by the learned counsel for respondent Nos.2 to 4.

10. According to the learned counsel for the respondents, the view expressed by the learned Single Judge is a possible view and in view of the law laid down by the Apex Court in the case of *Wander Ltd. and another V/s. Antox India P. Ltd.*<sup>1</sup> same does not warrant any interference.

11. The learned counsel for the respondents would urge that looking to the object with which the trusts were created, the fact that out of the 9 trusts, 6 trusts had served their purpose / object by virtue of stipulation. As such, the rights in the properties of the trusts should devolve on the beneficiaries. According to him, the trust properties cannot be governed and managed at the whims and fancies of the appellants-defendants, who are not in a position to disclose the accounts nor sharing profits / income out

---

<sup>1</sup> 1990 (Supp) Supreme Court Cases 727

of the trust properties. He submits that the learned Single Judge, after dealing with the main controversy in question, has passed the order impugned in the appeal which also protects the interest of the appellants and as such sought for dismissal of the appeal.

12. Considered rival submissions. It is not in dispute that the suit properties are subject to stipulation and object provided in various trust deeds. Six out of the total 9 trusts, which are private trusts, have already served its purpose. As a consequence, the trust properties should have been managed and governed keeping in mind the relevant stipulations which deals with an eventuality, such as serving the purpose for which the private trusts were formed.

13. In the aforesaid background, the learned Single Judge appreciated the entire structure and gamut and has passed the order impugned appointing an administrator.

14. Though the appellants have not consented for appointing an administrator, however, have consented for the administrator to be named. The fact remains that the order which is passed by the learned Single Judge in no way could be termed

to be prejudicial to the present appellants as the administrator is directed by the learned Single Judge to consider the rival claims to the parties and make a report to the Court. The order passed by the learned Single Judge of appointing an administrator cannot be termed to be adverse to the interest of the appellants, particularly when the appellants and the respondents are given liberty to make their claims before the administrator, who in turn shall make a report to the learned Single Judge.

15. If the parties to the suit have any grievance to the report submitted by the administrator, they are further entitled to make their claim and raise objections to the report of the administrator, which the learned Single Judge is bound to look into.

16. Apart from above, the appellants at this stage of the proceedings are not in a position to demonstrate as to the prejudice caused to them by the order impugned.

17. Apart from above, it is always open for the parties to the suit to raise any grievance with the aforesaid forum for their

claim in the suit properties or benefits to be drawn out of the same, if such lawful contention arise at appropriate stage.

18. In the backdrop of the aforesaid, having appreciated the view expressed by the learned Single Judge, the views expressed is well reasoned, just and proper in the factual and legal background. The view expressed by the learned Single Judge is a plausible view.

19. In the wake of above, no interference is warranted as the parties to the appeal have every right to raise their grievance before the learned Single Judge after the report is submitted by the administrator to the learned Single Judge. No interference is warranted. The appeal is dismissed.

20. In view of dismissal of the appeal, the Notices of Motion also stand dismissed.

*(NITIN W.SAMBRE, J.)*

*(NARESH H.PATIL, J.)*