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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3162 of 2016 (O/M)
Date of decision : 10.1.2018

Jan Kalyan Trust and others

..... Petitioners

Versus

Jai Kumar Gupta and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Akshay Bhan, Senior Advocate, with,
Mr. Alok Mittal, Advocate, for petitioners.

Mr. Mukesh Rao, Advocate, for respondents No. 1 and 2.

Mr. Abhey Gupta, Advocate, for,
Mr. Amar Vivek, Advocate,
for respondent No. 4.

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 present revision is the order dated 9.3.2016 (Annexure-P-9), passed by the learned Civil Judge (Junior Division), Bhiwani, vide which plaintiffs-respondents have been granted leave under Section 92 of Code of Civil Procedure, 1908, to institute a suit for permanent injunction regarding the property of defendant No. 1-petitioner trust.

I have heard the learned senior counsel for petitioners, the learned counsel for respondents No. 1 and 2, the learned proxy counsel appearing for learned counsel for respondent No. 4 and have also carefully gone through the file.

The perusal of plaint (Annexure-P-1) shows that Jai Kumar

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Gupta, Ved Pal Maan and Dharam Singh Sangwan filed a suit for prohibitory injunction under Section 92 CPC for restraining the defendant-trust and its trustees from alienating, selling, leasing or dismantle the suit property and some other acts in violation of terms and conditions of land and building granted by Haryana Government, Improvement Trust Bhiwani and Halwasiya trust and for violation of CBSE Rules. Further injunction was sought for restraining the defendant-trust from using the suit property for purpose other than education being illegal and in violation of terms and conditions of land and building granted by the Improvement Trust and Halwasiya trust.

It comes out that earlier defendants had approached this Court against permission granted by the lower Court and this Court, vide order dated 24.12.2015 (Annexure-P-8), passed in CR-2753-2014), remanded the case back for fresh decision in view of observations of the Court.

I have gone through the trust deed. The lower Court has taken a view that prima facie, all the three conditions for institution of suit are fulfilled. The trust undertook that it is a public charitable trust. The objects and purposes also shows that it was meant for the public welfare and various purposes i.e. education and for other public welfare purposes. The number of trustees could be two to fifteen, out of which two must be family members of founders. Therefore, prima facie the object of the trust is in line with the public charitable trust, as mentioned in the trust deed.

The learned senior counsel for petitioner-trust has disputed the same and stated that it was not a public charitable trust and that the entire control was not taken away by the public since two of the trustees must be from families of founders.

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I am of the view that for purpose of grant of permission under Section 92 CPC, the Court is to see prima facie case. The judgments referred to in the order of this Court dated 24.12.2015 (Annexure-P-8) pertain to cases where the evidence has already been led and findings are recorded on the basis of evidence. Here, merely suit has been instituted and trial Court has granted the permission. I am of the view that defendants have always the right to plead and prove that it is not a public charitable trust and not covered under Section 92 CPC. This is to be done by leading evidence. However, at the time of initial institution, the Court is to see prima facie case. It being so, I do not find any illegality or infirmity in the impugned order. Consequently, present revision is dismissed. However, defendants are always at liberty to plead and prove that it is not a public charitable trust and not covered under Section 92 CPC.

The observations made by this Court in this order as well as in the previous order dated 24.12.2015 (Annexure-P-8), shall not be taken into consideration, while deciding the main case on merits. Since the matter relates to public charitable trust, therefore, the trial Court is directed to dispose of same expeditiously, treating it to be action plan case.

(KULDIP SINGH)
JUDGE

10.1.2018
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No