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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
TRUST PETITION NO. 1 OF 2019

Hitesh Ashokkumar Bhatia …Petitioner

Versus

Yogesh Sureshchandra Bhatia …Respondent

Dr Abhinav Chandrachud, *with Nooruddin Dhilla, i/b M/s. Hariani & Co., for the Petitioner.*

Mr Ashok Singh, *for the Respondent.*

CORAM: G.S. PATEL, J

DATED: 10th April 2019

PC:-

1. This is a Petition under Section 53 of the Indian Trusts Act, 1882. The Petitioner, Hitesh Bhatia, a trustee of a private family trust, seeks to purchase the share of the Respondent, Yogesh, one of several beneficiaries of that trust. The fathers of these parties, Ashokkumar Bhatia and Sureshchandra Bhatia respectively, are brothers. They were the grandchildren of Hukumchand and Tarabai Bhatia. Hukumchand, Sureshchandra and Ashokkumar set up the Tarabai Bhatia Family Trust. Hitesh is both a beneficiary and a trustee of this trust. Yogesh is also a beneficiary, but not a trustee. Hukumchand and Tarabai had another son, Anilkumar, and a daughter named Nirmal. A family tree is annexed.

2. Paragraph 3 of the Petition set outs the relevant narrative regarding the establishment and setting up of the family trust. It seems that the trust also acquired an interest in an immovable property at Cinema Road, Mumbai in 1968. There is a building on this plot known as Ram Mansion. The building is of ground and five floors with a partial construction on the sixth floor. There are several tenements and units that serve as godowns, commercial premises and residential tenements. Over time, some portions of this building have been sold to others and therefore do not continue as trust property. There is no dispute today about this state of affairs regarding Ram Mansion.

3. Sureshchandra left Mumbai in 1971 and settled down in Delhi. Hukumchand died in 1979, Tarabai in April 2000 and Sureshchandra in 1991. Sureshchandra was survived by his wife Sarla, their daughter Poonam and Yogesh. Sarla herself died in September 1992 and Poonam was married in July 1993. Anilkumar died in November 2010.

4. The Petition asserts that this trust has been at all times in the effective control and management of the Petitioner, Hitesh, and his parents Ashokkumar and Ashokkumar's wife. Two others, Saurabh Satish Bhatia and Aman Raj Bhatia, are also trustees.

5. In 2011 Yogesh had a grievance against the trustees and filed a Suit No. 1089 of 2011 in this Court. There came to be made an order of 4th October 2012 putting Ram Mansion into receivership.

6. Yogesh and Hitesh have now arrived at an understanding that permits Yogesh to entirely exit the trust by transferring his beneficial interest in it to Hitesh. Obviously, this means that as part of this arrangement, Yogesh's Suit No. 1089 of 2011 will also need to be appropriately comprised but that will require a separate order in that suit. This settlement is for valuable consideration: Hitesh proposes to purchase Yogesh's beneficial fractional interest in the trust. It is for this reason that they have entered into an Memorandum of Understanding dated 5th January 2019. A copy is at Exhibit "E". Hitesh and Yogesh now seek permission under Section 53 of the Indian Trusts Act 1882:

> **53. Trustee may not buy beneficiary's interest without permission.**—No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgage or lessee of the trust property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.
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> **Trustee for purchase.**—And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

7. The Petition also says that other than Ram Mansion the remaining assets are relatively minor bank accounts and investments. Given that Ram Mansion is tenanted there is a large expenditure and requires regular attendance and maintenance. Yogesh no longer has any interest in safeguarding his beneficial interest in this trust property.

8. Section 53 makes it clear that the permission of this Court is required before a sale of this kind can be effected. It is true that the other beneficiaries are not joined to this Petition, but they need not be. Their respective shares are unaffected There is no impediment to the grant of relief.

9. The Petition is made absolute in terms of prayer clause (a). There will be no order as to costs.

10. Liberty to the parties to place a copy of this order before the Court to which the 2011 suit is assigned for an order of compromise or withdrawal in that suit, and for an order discharging the Receiver.

(G. S. PATEL, J)