

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

% **Date of decision: 7th January, 2019**

+ **CS(OS) 241/2018, IA No.6943/2018 (u/O XXXIX R-1&2 CPC), IA No.6944/2018 (u/S 92 r/w 151 CPC), IA No.10696/2018 (u/O VII R-14 CPC), IA No.10886/2018 (u/S 151 CPC) & Crl.M.A. No.32356/2018 (u/S 340 Cr.P.C)**

MRINALINI SINGH AND ANOTHER Plaintiffs

Through: Ms. Aprajita Singh, Mr. Robin V.S. &
Mr. Raghav Shankar, Advs.

Versus

BRIGADIER BALWANT DAHIYA TRUST & ORS..... Defendants

Through: Mr. Manish Kaushik & Ms. Mishal
Johri, Advs. for D-1,4&5.

Mr. Shivain Vaidialingam, Adv. for D-6.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The two plaintiffs viz. Mrinalini Singh and Deshwant Singh Dahiya have instituted this suit under Section 92 of the CPC claiming the following reliefs with respect to the defendant no.1 Brigadier Balwant Dahiya Trust, stated to be a Public Charitable Trust:

- “(i) Settlement of a new scheme for administration and management of Defendant No.1 Trust.
- (ii) Appointment of trustees in such number, and of such persons as considered appropriate, including if necessary the removal of Defendants No.2 to 5 as trustees.
- (iii) Any such order which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The suit was accompanied with IA No.6944/2018 seeking permission to sue under Section 92 of the CPC.

3. The suit along with the applications came up before the Court first on 18th May, 2018 when summons of the suit and notice of the applications were ordered to be issued even though in law the suit could have been instituted only with the leave of the Court and no such leave was granted in the order dated 18th May, 2018. In subsequent orders also, no leave was granted.

4. The counsel for the defendants no.1,4 and 5 and the counsel for the defendant no.6 have been appearing and appear today also. None appears for the defendants no.2 and 3. None of the earlier orders record that the said defendants have been served.

5. No written statements have been filed by the appearing defendants. Time for filing written statement will commence only after leave is granted to the plaintiffs to sue under Section 92 CPC inasmuch as without such leave there is no properly instituted suit.

6. The counsels for the appearing defendants also state that they have not filed written statements since application for permission to sue under Section 92 as well as application of the plaintiffs to file additional documents are pending consideration.

7. The counsel for the defendant no.6 Lt. Gen. Satwant Singh Dahiya states that the defendant no.1 is the Trust and the defendants no.2 to 5 are pleaded to be its trustees; that the defendant no.6 is not pleaded to be the trustee and no relief has been claimed in the suit against the defendant no.6.

8. The counsel for the plaintiffs states that though no relief has been claimed against the defendant no.6 and the defendant no.6 is not a necessary party but has been impleaded as a proper party. It is explained that the defendant no.6 is claiming the properties, which according to the plaintiffs

are of the defendant no.1 Trust, to be the properties of the defendant no.6 and the defendants no.2 to 5 Trustees also are supporting the said claim of the defendant no.6; since the said issue is for consideration in the present suit, the defendant no.6 has been impleaded as a proper party.

9. On the aforesaid argument, it appears that the determination, whether the properties claimed by the plaintiffs to be of the defendant no.1 Trust are of the defendant no.1 Trust or not is beyond the scope of Section 92 of the CPC.

10. The counsel for the plaintiffs agrees and states that she is not seeking the said determination in this suit as the same would take the suit out of the ambit of Section 92 of the CPC. It is further stated, that (i) Brigadier Balwant Singh Dahiya was the owner of the properties, which according to the plaintiffs are properties of the defendant no.1 Trust and according to the defendant no.6 are properties of the defendant no.6; (ii) the two plaintiffs are the daughter and son of Brigadier Balwant Singh Dahiya and the defendant no.6 is another son of Brigadier Balwant Singh Dahiya; and, (iii) Brigadier Balwant Singh Dahiya constituted the defendant no.1 Trust vide document dated 28th February, 2000 titled "Declaration of Trust", duly registered on 6th March, 2000.

11. A perusal of the document dated 28th February, 2000 titled "Declaration of Trust" shows Brigadier Balwant Singh Dahiya to have thereunder set aside and appropriated to himself a sum of Rs.3,000/- only in Trust for the defendant no.1 Trust and to have further declared as follows:

"2. It is the intention of the SETTLOR that the corpus of the TRUST, presently the money apportioned by the SETTLOR, shall also in due course of time, comprise the residue of his personal and real property and donations / gifts made by members of the general public wishing to aid and help the activities of the TRUST

and such immovable property / properties as may be acquired by or in the name of the TRUST.”

12. The counsel for the plaintiffs has further drawn attention to pages 36 to 40 of the documents filed by the plaintiffs, being the photocopy of a registered document dated 28th February, 2000 claimed to have been executed by Brigadier Balwant Singh Dahiya as his Will and whereunder Brigadier Balwant Singh Dahiya bequeathed as under:

“I am sole and absolute owner in possession of no.F-305 (together with servant quarter and car park garage no.C-10), at Som Vihar Apartments, R.K. Puram, New Delhi, having obtained the proprietary rights in the super structure and lease-hold rights in the proportionate land area underneath, from Army Welfare Housing Organization, and possession of which property was delivered to me on 10.6.92.

Although I am possessed of other assets also, at the moment I intend that I should make a bequest of this residential flat and that it should go to my elder son, Colonel Satwant Singh Dahiya, after I am no more.

NOW THEREFORE, I Brig. (Retd.) Balwant Singh Dahiya, do hereby will, bequeath and devise flat no.F-305 with servant quarter and car parking garage no.C-10, at Som Vihar Apartments, R.K. Puram, New Delhi together with all proprietary and lease hold-rights therein, to my son, Colonel Satwant Singh Dahiya, his heirs, executors and administrators, for his use and benefit, absolutely and forever.

As regards my other assets and properties, which I am possessed of or which I may acquire hereafter, I have purposely not made any reference to the same in this will of mine. It is my intention, that unless I deem it appropriate to make my other bequest in favour of my legal heirs or any one of them, my remaining assets should devolve upon a charitable trust known as “Brig. Balwant Dahiya Trust”, of which I am the SETTLOR and am presently the Managing Trustee. For this purpose, I may make transfers during my life time or execute a separate will or codicil as the case may be.”

[emphasis added]

13. The counsel for the plaintiffs has argued, that since the Will aforesaid is with respect to flat No.F-305 with servant quarter and garage at C-10, Som Vihar Apartments, R.K. Puram, New Delhi and not with respect to other properties of Brigadier Balwant Singh Dahiya, under the paragraph quoted above of the document titled “Declaration of Trust” and under the paragraph underlined above of the Will dated 28th February, 2000, the other properties of Brigadier Balwant Singh Dahiya became the property of the defendant no.1 Trust.

14. I am unable to agree.

15. The document titled “Declaration of Trust” does not constitute any of the properties of Brigadier Balwant Singh Dahiya as the properties of the defendant no.1 Trust, save for the sum of Rs.3,000/- alone. Mere recital in the said document that Brigadier Balwant Singh Dahiya, as Settlor of the defendant no.1 Trust, intended to, in due course, transfer his other properties also to the defendant no.1 Trust does not constitute vesting of the said properties in the defendant no.1 Trust.

16. Similarly, the underlined paragraph of the document dated 28th February, 2000 to the effect that Brigadier Balwant Singh Dahiya intended to transfer his other properties to the defendant no.1 Trust also does not constitute the defendant no.1 Trust as the owner of the said properties or a Will in favour of defendant no.1 Trust with respect to such other properties. Brigadier Balwant Singh Dahiya rather, is found to have clearly mentioned that he would transfer the other properties to defendant no.1 Trust either during his lifetime only or execute a separate Will or codicil with respect to other properties in favour of defendant no.1 Trust as the case may be. The same clearly indicates that the Will dated 28th February, 2000 is not a Will

with respect to any other property except the property at Som Vihar Apartments, R.K. Puram, New Delhi and in favour of defendant no.6. In the absence of Brigadier Balwant Singh Dahiya, during his lifetime having transferred other properties to the defendant no.1 Trust and in the absence of any other Will of Brigadier Balwant Singh Dahiya with respect to the other properties in favour of the defendant no.1 Trust, the other properties would not become the property of defendant no.1 Trust but, in accordance with law of succession applicable to Brigadier Balwant Singh Dahiya, would devolve to the heirs of Brigadier Balwant Singh Dahiya and not to the defendant no.1 Trust.

17. The above indicates that the very premise on which the suit is filed, has no basis in law and the suit is misconceived.

18. The counsel for the plaintiffs also has been unable to contend as to how, in the absence of any deed of transfer of other properties in favour of defendant no.1 Trust and in the absence of any Will of Brigadier Balwant Singh Dahiya bequeathing the other properties to defendant no.1 Trust, the plaintiffs can claim the other properties of Brigadier Balwant Singh Dahiya to have vested in the defendant no.1 Trust.

19. A perusal of the plaint also shows the plaintiffs to have not pleaded as to how else the properties of Brigadier Balwant Singh Dahiya other than the flat with servant quarter and garage at Som Vihar, became the properties of defendant no.1 Trust.

20. The cause of action pleaded for the suit is the stand taken by defendant no.4, as Administrator of the defendant no.1 Trust, in the suit for partition of estate of Brigadier Balwant Singh Dahiya, that the other properties of Brigadier Balwant Singh Dahiya were not of defendant no.1 Trust and the

failure of defendants no.2 to 5 Trustees to protect the said properties of defendant no.1 Trust against the adversarial claim with respect thereto of the defendant no.6.

21. When the plaintiffs are unable to, on their own pleas, make out a case in law, of the said properties being the properties of defendant no.1 Trust, the plaintiffs have no cause of action for this suit.

22. The argument of the counsel for the plaintiffs also is that the plaintiffs have otherwise nothing to do with the defendant no.1 Trust and have instituted this suit only because the defendants no.2 to 5, Trustees of the defendant no.1 Trust, are not claiming rights to the said properties which are being appropriated by the defendant no.6 unto himself.

23. The suit thus fails and is dismissed with compensatory costs of Rs.50,000/- to the defendant no.1 Trust for having caused the defendant no.1 Trust to engage in this vexatious and *mala fide* suit.

RAJIV SAHAI ENDLAW, J.

JANUARY 07, 2019

‘gsr’..