

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 7th January, 2020**
+ **CS(OS) 2/2020 & IAs No.70/2020 (u/S 92 CPC), 71/2020**
(u/O XXXIX R-1&2 CPC) & 72/2020 (for exemption)
KETAN GHANSHYAMDEV TAILANG & ORS.... Plaintiffs
Through: Mr. S.S. Lingwal, Adv.
Versus
DHARMESH MEHTA & ORS. Defendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The three plaintiffs viz. (a) Ketan Ghanshyamdev Tailang, (b) Gopal Krishna Chaturvedi, and (c) Madanlal Hastimal Rathi, have instituted this “suit under Section 92 of Civil Procedure Code for cancellation / declaration and permanent injunction and rendition of account” against five defendants viz. (i) Dharmesh Mehta, (ii) Shama Shah, (iii) Sharmistha Vakil, (iv) Shree Indira Betiji Vallabh Seva Trust, and, (v) Shree Indira Betiji Manav Kalyan Trust.
2. The suit along with an application under Section 92 of the CPC for leave to institute the suit and the application for interim relief has come up today for admission. Having gone through the plaint and having not found the suit to be maintainable under Section 92 of the CPC on the averments made in the plaint, the counsel for the plaintiffs has been heard at length on the said aspect.
3. The suit is instituted pleading that, (i) the plaintiffs are instituting this suit as followers of Late Indira Betiji Madhusudanlalji Goswami (popularly known as Indira Betiji), for cancellation of two Trust Deeds, both dated 22nd December, 2016, registered with the

office of the Sub-Registrar-III, Asaf Ali Road, New Delhi, executed by the defendant no.1 as 'Executor / Settlor' and the defendants no.1 to 3 as 'First Trustees', of the defendants no.4 and 5 Trusts, thereby forming the Trust of the movable and immovable assets of Indira Betiji; (ii) the defendants no.4 and 5 Trusts have been formed fraudulently by the defendants no.1 to 3; (iii) the plaintiffs are filing the present suit on behalf of beneficiaries and members of the public, to protect the interest of the public Trusts viz. Vallabh Memorial Trust (VMT) and Vallabh Anugrah Charitable Trust (VACT), registered in the State of Gujarat and of which Indira Betiji was the founder Trustee; (iv) the defendants no.1 and 2 have forged a Will of Indira Betiji and on the basis of the said forged and fabricated Will dated 1st November, 2015 formed the defendants no.4 and 5 Trusts wherein some of the properties of VMT and VACT have been diverted / transferred; (v) there was no need to form the defendants no.4 and 5 Trusts when VMT and VACT, already formed for the same purpose, were in existence and operation; (vi) there was also no need to transfer / gift the land already under VMT and VACT to the defendants no.4 and 5 Trusts; (vii) there is an element of dishonest intention and lack of probity on the part of defendants no.1 to 3; (viii) the suit is of a representative character, instituted in the interest of the beneficiaries and not merely for vindication of the individual or personal rights of the plaintiffs; (ix) the administration of the defendants no.4 and 5 Trusts would not be in the interest of public at large; (x) the plaintiffs are thus seeking a decree for cancellation of the Trust Deeds of the defendants no.4 and 5 Trusts; (xi) Indira Betiji died on 30th September,

2016 at Vadodara; (xii) the defendants no.4 and 5 Trusts have been formed to misappropriate the movable and immovable properties of Indira Betiji and the VMT and VACT; (xiii) Indira Betiji was the President and Trustee along with other Trustees of the VMT and VACT which have considerable assets in Gujarat, Uttar Pradesh, Rajasthan etc.; (xiv) the mother of plaintiff no.1 was the sister of Indira Betiji; Indira Betiji did not marry and had no children; plaintiff no.1 being one of the legal heirs of Class-II category of Indira Betiji, is the follower / disciple of Indira Betiji; (xv) the plaintiffs no.2 and 3 are active members of the Vaishnav community and have been in close contact with Indira Betiji and spent a long time with her till her death; the plaintiff no.3 was one of the Trustee in VMT along with Indira Betiji; (xvi) the defendant no.2, on the basis of the forged Will of Indira Betiji has carried out some changes in the revenue records with respect to properties bearing Block No.D-3, Block No.F-11 and Block No.12 of City Survey No.2364 and 2365 situated at Manjalpur, Vadodara; (xvii) a public notice was published in the daily newspaper about the probate application No.669/2018 titled “Shri Kewalkrishna Gurucharandas Tuli Vs. Sama Piyush Shah & Ors.” pending before the Court of Civil Judge (SD), Vadodara with respect to the Will dated 1st November, 2015 of Indira Betiji and in which Will, Kewalkrishna Gurucharandas Tuli and defendants no.1 to 3 have been nominated as the Executors of the Will; (xviii) the signatures on the said Will are not of Indira Betiji and have been fabricated; (xix) the defendant no.2 has also filed a frivolous civil suit for declaration and permanent injunction before the Court of Principal Civil Judge, Vadodara seeking

enforcement of the Will dated 1st November, 2015 of Indira Betiji; (xx) the plaintiffs, on coming to know of the probate petition, have filed objections therein and which probate petition is still pending consideration; (xxi) the plaintiffs have also learnt that some proceedings with regard to fraudulent transfer of properties of Indira Betiji and the properties of VMT and VACT were fraudulently transferred by defendants no.1 and 2 by initiating fraudulent proceedings before the Charity Commissioner, Ahmedabad and which has been challenged before the Gujarat Revenue Tribunal by the plaintiff no.3 by filing appeals; (xxii) VMT owns property at Vrindavan having value of over Rs.60 crores and land at Gandhi Nagar, Gujarat; VACT owns land at village Pucchari, Rajasthan having value of Rs.20 crores; (xxiii) the properties of VMT and VACT have been fraudulently transferred to defendants no.4 and 5 Trusts without taking any consideration and without consent or approval of the founder trustees or the trustees of the said VMT and VACT; (xxiv) Gift Deed of the land at Vrindavan and Sale Deed of the land at Manjalpur, Vadodara which were the personal property of Indira Betiji, have been executed and proceedings have been initiated for transfer in the office of the City Survey; (xxv) trustees have been inducted in the VMT and VACT on the basis of forged resolution; (xxvi) the defendants no.1 to 3 have been doing other fraudulent acts contrary to the Trust Deeds of VMT and VACT; (xxvii) stamp duty of Rs.3.29 crores is being claimed by the authorities for the transfer / sale transaction of the properties fraudulently carried out by the defendants no.1 to 3; (xxviii) the defendants have mishandled the affairs not only

of VMT and VACT but also of defendants no.4 and 5 Trusts; and, (xxix) the formation of defendants no.4 and 5 Trusts cannot be permitted under the provisions of law.

4. On the basis of the aforesaid pleas, the following reliefs have been claimed in the plaint:

- “(i) A decree for cancellation of the Trust deeds both dated 22.12.2016 registered in the name of (1) Shree Indira Betiji Vallabh Seva Trust vide registration No.815, book No.4, Vol. No.4,349 on pages 108 to 132 on dated 23.12.2016 and (2) Shree Indira Betiji Manav Kalyan Trust vide registration No.816, book No.4, Vol.No.4,349 on pages 133 to 158 on dated 23.12.2016, both registered with the office of the Sub-Registrar-III, Asaf Ali Road, New Delhi, thereby cancelling and declaring the defendant No.4&5 Trust as null and void.
- (ii) or in the alternative frame a scheme in order to administer the defendant No.4 &5 Trust.
- (iii) Permanently remove the defendant No.1 to 3 from acting as trustees of defendant No.4 & 5 Trusts.
- (iv) Direct the defendants No.1 to 3 to produce all the accounts of the defendant No.4&5 Trust including all the accounts of the sale and purchase of the movable and immovable assets / properties of late Indirabetiji.
- (v) A decree for such other or further relief's including cost of this lis, as this Hon'ble court may deem fit, expedient and / or appropriate in the interest of justice.”

5. I have enquired from the counsel for the plaintiffs, how in a suit under Section 92 of the CPC, the relief of cancellation of Trust Deeds

dated 23rd December, 2016 and declaration as null and void of the defendants no.4 and 5 Trusts can be granted.

6. In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any trust, Section 92 of the CPC permits any two or more persons having an interest in the trust to, after obtaining leave of the Court, institute a suit to obtain a decree:

- “(a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- (d) directing accounts and inquires;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.”

7. A bare perusal of Section 92 of the CPC shows that the relief of cancellation of Trust Deeds and declaration as null and void of the defendants no.4 and 5 Trusts is not within the ambit thereof.

8. The counsel for the plaintiffs also does not controvert and states he is not pressing for relief no.(i) and claims the reliefs (ii) to (iv) in the alternative.

9. I have enquired from the counsel for the plaintiff, whether not giving up of relief at serial no.(i) aforesaid by the counsel for the plaintiffs is contrary to the interest which he seeks to represent, inasmuch as a reading of the longwinded, incomprehensible and repetitive plaint shows the entire case of the plaintiffs to be of forgery and fabrication by the defendants no.1 to 3, for their own personal gains, of the Will of Indira Betiji and of creation of defendants no.4 and 5 Trusts and withdrawal by the plaintiffs of the relief at serial no.(i) would be an affirmation by the plaintiffs of conduct of the defendants no.1 to 3, grievance with respect where to is otherwise made in the plaint. The plaintiffs claim to have filed objections to the Probate Petition filed, and acceptance by the plaintiffs of the defendants no.4&5 Trusts by withdrawal of this challenge to very creation and existence of the said Trusts, is likely to hurt the interest of plaintiffs.

10. The counsel for the plaintiffs then states that the plaintiffs be permitted to seek the relief of cancellation till the decision of the probate petition aforesaid. However upon being reminded that the claim in prayer paragraph (i) is outside the domain of Section 92 of the CPC, the counsel for the plaintiffs states that the relief at serial no.(i) be permitted to be given up with liberty to file appropriate proceedings for the same relief.

11. I have enquired from the counsel for the plaintiffs, how the plaintiffs on the one hand, seek cancellation of the Trust Deeds and declaration as null and void of the defendants no.4 and 5 Trusts and at the same time claim reliefs of administration of the defendants no.4 and 5 Trusts. It has further been put to the counsel for the plaintiffs, whether not the remedy of the plaintiffs with respect to the grievances made, is in the pending proceedings in the Gujarat Courts, by applying for restraining the defendants no.1 to 3 from dealing with the estate of Indira Betiji or the properties, even if got transferred to the defendants no.4 and 5 Trusts. It has yet further been enquired, whether not with respect to a Will made in Gujarat and with respect to properties situated in Gujarat, Uttar Pradesh and Rajasthan, the appointed executor cannot act till the grant of probate.

12. The suit is also found to suffer from another anomaly. Though the plaintiffs claim to institute the suit in a representative capacity as trustees / beneficiaries of VMT and VACT, but if so, the said VMT and VACT should have come forward to institute the suit. If VMT and VACT are not willing to come forward for the reasons of Trustees thereof mismanaging their affairs and not acting in their interest, the remedy of plaintiffs is to institute Section 92 CPC proceedings with respect thereto.

13. Yet another anomaly from which the suit suffers is that the plaintiffs do not fulfill the eligibility criteria of having an interest in the defendants no.4 and 5 Trusts administration whereof is sought in the alternative. On the contrary, the plaintiffs dispute and controvert the very constitution of the defendants no.4 and 5 Trusts. The

plaintiffs thus cannot be granted leave of the Court and without which the suit under Section 92 of the CPC cannot be entertained.

14. Moreover, the plaintiffs have more than ten times in the plaint challenged the Will dated 1st November, 2015 asserted by the defendants no.1 to 3 of Indira Betiji and validity whereof cannot also be adjudicated in this suit in view of the probate with respect thereto being before the Gujarat Courts.

15. Interestingly, the plaintiffs are also controverting the induction of defendants no.1 and 2 as Trustees of VMT and VACT and I have enquired from the counsel for the plaintiffs, how finding with respect thereto can be granted in this suit.

16. The claim of the plaintiffs of seeking cancellation of the Trust Deeds and declaration as null and void of the defendants no.4 and 5 Trusts and the claim in alternative of the plaintiffs of removal of defendants no.1 to 3 as trustees of the defendants no.4 and 5 Trusts and of administration of defendants no.4 and 5, are antithetical to each other and cannot coexist. Also, the entire pleadings of the plaintiffs is of challenge to the defendants no.4 and 5 Trusts and save for mention of the claim against defendants no.4 and 5 Trusts for Rs.3.29 crores towards stamp duty, no other pleadings with respect to maladministration if any of the defendants no.4 and 5 Trusts or for the need of this Court to intervene in the internal management of the defendants no.4 and 5 Trusts, is found in the plaint. For this reason also, no case for granting any relief under Section 92 of the CPC with respect to defendants no.4 and 5 Trusts is made out.

17. The counsel for the plaintiffs, in response to all the aforesaid, only keeps on saying that all this is a matter of trial and the suit be entertained and *ex parte* interim relief claimed be granted.

18. I am unable to agree.

19. The Courts are not to blindly admit proceedings filed before it and for a proceeding to be entertained and admitted by the Court, a claim having a possibility in law to succeed, has to be made out. Once on a reading of the plaint, it is found that on the case pleaded by the plaintiffs, there is no chance of the plaintiffs succeeding or being entitled to any of the reliefs claimed, the proceedings are not to be entertained and put to trial, merely to keep the Courts running and the lawyers busy. The counsel for the plaintiffs, instead of facing the issues raised today, is adopting ostrich like attitude of deferring the evil day and which will again be not in the interest of the clients he represents.

20. In ***Mahant Pragdasji Guru Bhagwandasji Vs. Patel Ishwarlalbhai Narsibhai*** AIR 1952 SC 143 it was held that (i) a suit under Section 92 of the CPC is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character; (ii) such suit can proceed only on the allegation that there is a breach of such trust or that directions from the Court are necessary for administration thereof; (iii) it is only when these conditions are fulfilled that the suit has to be brought in conformity with the provisions of Section 92; (iv) a suit for declaration that a certain property appertains to a religious trust may lie under the general law but is outside the scope of Section 92 of the CPC; (v) in a suit framed under Section 92 of the CPC, the only reliefs which the plaintiff can claim and the Court can grant are those enumerated specifically in different clauses of the Section; a relief praying for a declaration that the properties in the suit are trust properties does not come under any of these clauses; and, (vi) when the defendant denies the existence of a trust, a declaration that the trust does

exists might be made as ancillary to the main relief claimed under the Section if the plaintiff is held entitled to it; but when the case of the plaintiff fails for want of a cause of action, there is no warrant for giving him a declaratory relief under Section 92. To the same effect is *Bishwanath Vs. Sri Thakur Radha Ballabhji* AIR 1967 SC 1044. Mention may also be made of *Raghubir Singh Vs. Dharamsala Bani Lodhi Trust* 2012 SCC OnLine P&H 6327 dismissing the application of the plaintiffs for leave under Section 92 of the CPC on the ground that the plaintiffs had earlier filed a suit alleging that the Trust Deed was illegal and null and void and seeking revocation of the Trust Deed and recovery of possession of the said properties and which suit was dismissed, and by holding that the plaintiffs having filed the suit under Section 92 thereafter, it was evident that the plaintiffs were not well wishers of the Trust and had no interest in furtherance of the aims and objectives of the Trust or in proper administration of the Trust and its properties and had instituted the suit only to grab the properties.

21. The counsel for the plaintiffs, just before lunch, has mentioned the matter and states that he be permitted to withdraw the suit with liberty to file appropriate proceedings. He also states that substantial court fees of about Rs.2 lacs has been paid and be ordered to be refunded.

22. The suit is dismissed as withdrawn. The reasons aforesaid being in the nature of rejection of the plaint, needless to state, the plaintiffs would remain entitled to, on the facts pleaded, claim appropriate reliefs entitled in law and before appropriate fora.

23. A certificate entitling the plaintiffs to refund of court fees paid, less Rs.40,000/-, be issued and handed over to the counsel for the plaintiffs.

RAJIV SAHAI ENDLAW, J.

JANUARY 07, 2020

‘gsr’..