

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

CSOS/5/2022

HOLY HOME TRUST AND ANR.
Versus
INDRANI MUKHERJEE

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 8th July, 2022.

Appearance:
Mr. Koushik Chatterjee, Adv.
Ms. Tarunika Pal, Adv.
... for the plaintiffs.

Mr. Subhasis Bandopadhyay, Adv.
Mr. Niranjana Adhikari, Adv.
... for the defendant.

The Court: This is an application filed under Chapter XIII of the Original Side of Rules.

The plaintiff no.2 and the defendant are the trustees of one Holy Home Trust. One Swaraj Mukherjee had created a private family Charitable Trust namely Holy Home Trust. The Deed of Trust was duly registered with the Additional Joint District Sub Registrar at Serampur, Hooghly. Thereafter, the Deed of Trust was revoked by a registered instrument being no. 4457 in the year 1992. Subsequently, Swaraj Mukherjee created a Trust through an instrument being no. 5379 in the year 1992, whereby the plaintiff and the defendant no. 2 were appointed as Founder Trustees of the Trust. In terms of the Trust Deed, the defendant became the Chairman of the Trust.

In this application the petitioner seeks the opinion and advise of Court, as to whether the deed of declaration registered before the A.R.A., III, Kolkata being 758 in the year 2007 executed by the defendant changing the nature of the trust

from a Private Family Trust to a Public Charitable Trust after the death of settlor without any provisions in the original trust deed could be executed or not?

In my view, in the absence of any provision in the Trust Deed and without authority, the defendant could not have changed the Trust Deed from a Private Family Trust to a Public Charitable Trust after the death of the settlor. I also find no power in the Deed of Trust whereby the Trustees have been given the power to alter the nature of the Trust and convert the same to a public charitable trust.

During the hearing, it was categorically submitted on behalf of the defendant that the Deed of Declaration dated 26th July, 2007 modifying the original Trust Deed had been wrongly executed

Hence, I answer the questions raised in the Summons as follows:

- (a) Whether the Deed of Declaration registered before the A.R.A. III, Kolkata being no. 758 for the year 2007, executed by the Defendant changing the nature of the trust from Private Family Trust to Public Charitable Trust, after the death of the Settlor of the original Trust, and without any provision in the original Trust Deed is valid or not? – **No.**
- (b) Whether the Defendant have the authority under the Trust Deed being no. 5379 in the year 1992 registered before the Additional District Sub Registrar at Serampore, to change the nature of the trust from Private Family Trust to Public Charitable Trust, only by executing a Deed of Declaration for rectification of two words? – **No**

Accordingly, CSOS 5 of 2022 stands disposed of.

(RAVI KRISHAN KAPUR, J.)