

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.839 of 2018

Shyam Lata Agarwal & Ors.

Petitioner
Mr.S.K.Acharya, Advocate

-versus-

Raj Kumar Saraff & Anr.

Opposite Party(s)
Mr.G.N.Sahu, Advocate

**CORAM:
JUSTICE BISWANATH RATH**

ORDER
17.02.2022

Order No.

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1. Heard learned counsel appearing for the parties
2. This Civil Miscellaneous Petition involves allowing an application under Section 92 of the Code of Civil Procedure. In the challenge to the impugned order, learned counsel appearing for the petitioners taking this Court to the cause title portion and the description of both the plaintiffs involved herein through paragraphs-3 and 10 contested maintaining of such application on the premises that unless both the plaintiffs are affected by the conduct of trust, there is no joining of the both persons meeting contingency under Section 92 of the Code of Civil Procedure. Considering this submission and the grounds of challenge involved herein, this Court from Section 92(1) of the Code of Civil Procedure finds as follows:

“**92. Public charities.**—(1) In the case of any alleged breach of any express or constructive trust credited for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the ²[leave of the Court,] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate 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 inquiries;
(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.”

3. Reading the aforesaid provision, this Court finds there is permission to two or more persons having an interest in the trust and are required to obtain the leave in maintaining suit of this nature. Looking to the cause title and for the disclosure in paragraphs-3 and 10 of plaint, this Court finds there is no difficulty in the maintaining of the suit in maintaining the leave application. Through paragraphs-3 and 10 both the plaintiffs have already shown to have been affected by the activities of the trust. It is keeping this in view, this Court finds there is no difficulty either in maintaining the application under Section 92 of the Code of Civil Procedure or even in allowing such application. This Court finds, there is no infirmity in the impugned order. Consequently, the Civil Miscellaneous Petition stands dismissed.

4. The view taken in allowing the application under Section 92 of the Code of Civil procedure is nothing to do with the adjudication involving the suit. Question, if any, being raised is required to be considered in the ultimate trial of the suit.

(Biswanath Rath)
Judge

Sks