

CR-4346-2019 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.118

**CR-4346-2019 (O&M)
Date of Decision: 11.12.2023**

SAURABH BHOLA

...Petitioner

Versus

**UTTAM CHAND SITAWANTI DHARAMSHALA CHARITABLE
TRUST AND OTHERS**

....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Mani Ram Verma and Mr. Nipun Verma, Advocates
for respondents No.1 to 5.

ARCHANA PURI, J. (Oral)

Challenge in the present revision petition is to the order dated 17.05.2019, passed by the court below, whereby an application under Order 7 Rule 11 CPC filed at the instance of the petitioner (defendant No.1 before the court below), was dismissed.

Essential facts, as culled out from the paperbook are as follows:

That, initially Uttam Chand Sitawanti Dharamshala Charitable Trust along with President and three other trustees had filed a suit for declaration, thereby asserting the plaintiffs to be the President/Trustees and Members of the Managing Committee, duly constituted of plaintiff No.1 and also to assert their entitlement to manage, protect and safeguard the interest and to conduct the proceedings in respect of all the matters on behalf of the plaintiff No.1, which is the Trust and also sought declaration about the

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Managing Committee consisting of defendants No.1 to 7, to be illegal, null and void and further sought restraint on their part from causing illegal interference in getting the rent etc from the tenants of the shop and also sought rendition of accounts, in respect of income and expenditure of the Trust and that defendant No.1 is liable to handover the record of the Trust to the plaintiffs.

As evident from the copy of the plaint, Sh.Uttam Chand was the founder of the “Uttam Chand Sitawanti Dharamshala Charitable Trust, Hisar”, vide registered deed No.286 dated 23.10.1978. He appointed Smt. Sitawanti w/o Uttam Chand as well as Dalip Singh s/o Nanak Singh, Smt. Jasbir Kaur w/o Dalip Singh, Sh. Lal Chand Nagpal s/o Sh. Hukum Chand, Sh. Mehar Singh s/o Sh. Lal Chand and Sh. Jagdish Chander s/o Sh. Chander Bhan, as trustees of the said Trust. A supplementary deed of Trust was also executed on 26.02.1980 by the above founder, vide deed No. 404. The procedure has been mentioned in the above Trust deed, in respect of working and the proceedings to fulfil the aims and the objects of the Trust.

That, Sitawanti wife of founder, Sh. Uttam Chand, was the Chairman/President in her lifetime, after the death of Sh.Uttamchand Founder/Chairman/President and appointed various trustees in her lifetime, the detail whereof has been given in Paragraph No.4 of the plaint.

Sitawanti died on 11.10.2008 and after her death, the whole record was in possession of Devender Bhola. The said Devender Bhola is the father of defendant No.1 (Saurabh Bhola). He hatched a conspiracy in collusion with defendant No.1 with malafide intention to grab the income and the property of the Trust by illegal means. After the death of Devender Bhola, defendant No.1 started misappropriating the funds and income of the

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Trust by illegal means and did not render the accounts of the income, he asserted. The plaintiffs are still the members/trustees of the Trust. However, defendant No.1 illegally without any right and basis, has fictitiously called a meeting, which is only a paper transaction and became the President/Chairman/Managing trustee, on the basis of the Will bearing No. 219 dated 02.01.1997 and on the basis of adoption deed bearing No. 531 dated 24.12.1996, alleged to be executed by Smt. Sitawanti and on the basis of the Civil Suit No.131-C of 2008, decided on 30.05.2015 by the Court, constituted the Managing Committee, consisting of defendants No.1 to 7. The defendant No.1 could not be appointed as President/Chairman of the Trust, on the basis of fake and alleged Will No.219 dated 02.01.1997 and on the basis of illegal and fake adoption deed No.531 dated 24.12.1996, alleged to be executed by Smt.Sitawanti, because the land and the premises of the above Trust is no longer the personal property of the founder and his family or any other person on the basis of any record or documents and it shall remain always of the Trust. With these assertions, the suit was filed.

In pursuance of notice having issued, the petitioner (defendant No.1 before the Court below) made appearance and filed an application under Order 7 Rule 11 CPC, thereby seeking rejection of the plaint.

In the application, it was asserted about the plaintiffs to have filed false and frivolous suit for declaration and further also asserted that Civil Suit No.131-C of 2008, titled as “Ashok Kumar v/s Saurabh etc.” for partition claiming ownership and possession of 1/4th share in the property of Dharamshala, on the basis of forged and fabricated Will No. 240 dated 11.08.2003, was filed and the suit was dismissed on 30.05.2015.

In the application, the relevant para of the judgment was

reproduced, which is as hereingiven:

“In these circumstances, since the due execution of Will Ex. P1 (Will No.240 dated 11.08.2003, has not been proved on record, the earlier Will No.219 dated 02.01.1997, Ex.DW4/D would prevail as its execution has not been disputed between the parties and therefore the defendant No.1 was the exclusive owner of the properties, in question, on the basis of the said Will. In these circumstances, plaintiff or the proforma defendants cannot claim their share in the property in question and therefore, cannot claim for partition of the property in question.”

Furthermore, while making reference to clauses 20 and 22 of the Trust deed, it was stated that Smt. Sitawanti, by virtue of the Will had appointed Saurabh as Trustee in her place. It was also stated that this Will was held legal and valid, vide judgment dated 30.05.2015 and thus, Saurabh is the Chairman of the Trust, in question. Further, it was stated in the application that the plaintiffs in the present suit have sought declaration from the court, necessary for administration of the plaintiff Trust, removal of trustees, directing accounts, enquiries and thus, the suit falls within the purview of Section 92 of CPC and therefore this Court has no jurisdiction to entertain and try the Suit and the plaint, being barred under law, is liable to be rejected.

However, in reply, the averments made in the application were denied. Even though, it was admitted about Civil Suit No.131-C of 2008 having filed by plaintiff No.2, but the same asserted to have been filed on the basis of the Will No.240 dated 11.08.2003, in respect of residential house and the property of the Trust, but however, claim with regard to the property of the Trust was abandoned by the plaintiff No.2 and the suit

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remained in respect of residential House No.377 owned by Smt. Sitawanti. The claim in respect of property of the Trust was not the ownership of Smt. Sitawanti, in individual capacity and it was further submitted that Will No. 240 was forged and fabricated. However, it was admitted that the suit was dismissed and appeal was filed, which was accepted by the Court and Will No. 240 has been declared valid. Earlier, Will No. 219 dated 02.01.1997 had no force, as the subsequent Will No. 240 prevailed upon. Will No.219 is null and void and forged in favour of Saurabh, defendant No.1.

Furthermore, it was averred that Section 92 CPC is not applicable in the present case and the suit had been rightly filed in the competent Court. Thus, a prayer was made for dismissal of the application.

After hearing counsel for the parties, vide impugned order dated 17.05.2019, the application under Order 7 Rule 11 CPC, was dismissed.

Feeling aggrieved, on account of dismissal of the application, the petitioner (who was defendant No.1 before the Court below), filed the present revision petition.

Learned counsel for the parties heard.

Undisputedly, the suit, though, relates to the appointment/removal of the Trustees and also, to restrain from interference in the functioning of the Trust, but however, the same has not been filed under special provision under Section 92 CPC.

At the very outset, it is essential to mention that suit under Section 92 is the suit of special nature, which pre-supposes the existence of public Trust of a religious or charitable character.

Such a suit can proceed only on the allegation that there was

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breach of such trust or that the direction of the Court is necessary, for the administration of the trust and the plaintiff pray for one or more of the reliefs that are mentioned in the Section. The object of Section 92 of the CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suit filed against them. Public Trust for charitable and religious purposes, are run for the benefit of the public and no individual should take benefit from them.

In this backdrop, though suit filed is an ordinary suit, but the grievance of defendant No.1 is that the suit ought to have been filed under the special provision of Section 92 of CPC. Of course, as pointed out during the course of arguments, the purpose behind the institution of the suit can be gone into and court can go beyond relief sought and focus on the purpose, for which the suit is filed. It is in fact, the object or the purpose for filing the suit and not essentially, the relief, which is of paramount importance. Of course, there cannot be any hard and fast rule to find out whether real purpose of the suit was vindicating public right or the object was vindication of some personal rights.

On close reading of the averments of the plaint, it is evident that though the suit relates to the trust, but however, it is for the assertions/denial of the personal rights, on the basis of the Will, which led to the further dispute, *vis-a-vis* the appointment of the trustees. Emphasis in the plaint was certainly for private and personal disputes. The mere fact that the suit relates to public trust of religious and charitable nature and the reliefs claimed fall within some of the clauses of Sub-Section 1 of Section 92 of CPC, would not by itself attract the operation of the Section, unless the suit is of representative character instituted in the interest of the public.

However, it is not so in the present case.

The main adjudication in the suit relates to the appointment of the petitioner (defendant No.1 before the Court below), with regard to his having become Trustee, on the basis of the Will of Sitawanti, widow of the founder of the Trust.

In these circumstances, when the suit, as such, has been bifurcated with regard to the personal property as well the Trust property in previous suit, therefore, the focus is on personal grievances, on the basis of the Will and does not relate to the Trust property, as now asserted.

Such being the position, where the personal dispute as such, is evident with regard to laying hands over the property of Sitawanti by virtue of the Will executed by her, it cannot in any manner relate to the functioning of the Trust and certainly, not in the public interest.

In the given circumstances, the suit as filed, does not fall within the parameters of Section 92 of CPC, as the primary object or purpose of the suit is to seek remedy of the infringement of the individual right. Whether a suit falls within Section 92 of CPC, the Court must go beyond the reliefs and have regard to the capacity, in which the plaintiffs are suing and to the purpose, for which the suit was brought. As already observed aforesaid, the grievance is personal between the parties relating to the rights accruing on the basis of the will of Sitawanti, with regard to the appointment of Trustees of the Trust in question.

In the given circumstances, when the property of Trust, as such, could not be willed away, real purpose, as such is not evident about the functioning of the Trust in question. As such, there was no necessity to file the suit under Section 92 of CPC. Precisely, on this account there is no

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merit in the application under Order 7 Rule 11 of the CPC which has been so dismissed by the Court below.

Thus, the revision petition sans merit and stands dismissed.

11.12.2023

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(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes