

Ct. 27.02
No. 652 2024
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C.O. 2286 of 2019
Akhil Bharat Jaiguru Sampradaya & Anr.
-Versus-
Karunamoy Sen Sarma

Mr. Arnab Roy
Mr. Abhee Dutta
Ms. Sayani Ahmed
Mr. P.S. Ghosh **...For the Petitioners**

Mr. Karunamoy Sen Sarma ...Opposite Party in Person

The opposite party herein as plaintiff initially brought a suit, being Title Suit No. 819 of 2016 before the Civil Judge (Senior Division), 1st Court, Barasat against the present petitioners seeking adjudication, restoration of trusteeship and injunction. In the said suit various irregularities in the management of the trust properties were alleged. As opposite party/plaintiff raised protest, he was allegedly sidelined. Thereafter, without giving adequate notice and opportunity of hearing to him an enquiry committee was set up and by the impugned decision dated 3rd July, 2016, he was expelled from the trusteeship of the said trust. Plaintiff also filed an application for injunction wherein he made prayer mainly to rescind, withdraw, cancel the letter of expulsion dated 4th July, 2016 and for an order of injunction restraining the petitioners from carrying on its all sorts of functioning except the Puja/Path/Bhog-Rag/Arati etc. till the disposal of the application.

Petitioners herein as defendants appeared in the

said suit and filed an application under Order VII, Rule 11 of the Code of Civil Procedure (hereinafter referred to as the Code) stating that from the trust deed dated 8th Magh, 1379 B.S., it is clear that such trust was created by Sri Sitaram Das Onkarnath with a view of proper management of trust properties and to circulate the ideology of Joyguru Sampradaya. In that deed of trust it is stated that Joyguru Sampradaya is not at all created in a province but throughout India and prior to the creation of such trust, said Akhil Bharat Joyguru Sampradaya was registered as per the provisions of Societies Registration Act but such trust was never been formed by Sitaram Das Onkarnath for his family but for the public at large and the trustees are not within the family members and accordingly such trust is a public trust.

Petitioner's further contention is that from the plain reading of the plaint it reveals that the opposite party sought for relief with regard to removal of a trustee but no leave has been granted from the learned District Judge under Section 92 of the Code. Not only that Court of Civil Judge (Senior Division) cannot be called as a Court of Principal Civil Court of original jurisdiction of the district to try a suit which involves public trust.

The opposite party herein contested such application under Order VII, Rule 11 and filed written

objection contending that Section 92 of the Code does not apply in the present context. He further contended that while disposing of a writ petition, being W.P. 14932 (W) of 2016, this High Court held that the Akhil Bharat Jaiguru Sampradaya is a private trust and accordingly, no leave is required to be granted and as such suit is maintainable even in the absence of any compliance under Section 92 of the Code.

Learned Trial Court by an order dated 16th March, 2017 rejected the said application with the observation that since the subject matter of the suit centers around about the expulsion of the trustee in relation to a public trust, therefore the suit should have been filed before the Court of learned District Judge, being Principal Civil Court and not before the learned Court of Civil Judge (Senior Division) and therefore directed the plaint to be returned to the learned District Judge and also directed the opposite party to appear before the learned District Judge to ventilate his grievance.

By an order dated 17th April, 2017 learned Trial Judge modified his order as per direction of the learned District Judge, Barasat, North 24-Parganas and as per direction of the District Judge, he returned the plaint to the plaintiff, who is opposite party herein for further presentation. After getting the plaint returned, the opposite

party herein filed the said plaint before the learned District Judge, Barasat, being Title Suit No. 3 of 2017, which was subsequently transferred to the Court of the learned Additional District Judge at Barasat, North 24-Parganas.

In the said suit the petitioner No. 2 herein filed another application under Order VII, Rule 11 with a prayer for rejection of the plaint filed in the aforesaid Title Suit No. 3 of 2017 contending that the founder of the trust founded by Akhil Bharat Joyguru Sampradaya, have many branches all over the country and registered under the Societies Registration Act and the trust deed was executed and registered as public trust for the benefit of the public at large and the Trial Court also held that the said trust is public in nature and therefore unless leave is granted by the learned District Judge or by learned Advocate General such court has got no jurisdiction to entertain such suit as per the provisions of Section 92 of the Code and as such the plaint is liable to be rejected under Order VII, Rule 11 of the Code.

The opposite party herein filed objection against the said application contending that the settler of said trust has not declared the trust as a public trust. It is simply declared as registered society. The opposite party further alleged that this High Court also opined the trust being private trust and the remedy lies in instituting civil

proceeding and as such the provisions laid down under Order VII, Rule 11 does not attract in the present context and prayed for rejection of the application.

Learned Additional District Judge by the impugned order disposed of the said application filed under Order VII, Rules 11 of the Code, wherein he has rejected the petitioners' prayer for rejection of plaint, with a further observation that since High Court observed in W.P. 14932 (W) of 2016 that the grievance of the petitioner relates to "*trusteeship of a public trust*", so there is no necessity to obtain any leave before instituting the suit and for that ground also he rejected the petitioners' prayer for rejection of plaint.

I have considered the submissions made on behalf of the parties. Before proceeding further, let me quote relevant portions of the provision laid down under Order VII, Rule 11 of the Code of Civil Procedure :-

"11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*

(f) where the plaintiff fails to comply with the provisions of rule 9:

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

Under the said provision it is clear that the plaint is liable to be rejected only on certain grounds and here the petitioner has prayed for rejection of the plaint mainly on the ground that it does not disclose cause of action and that no leave has been taken from the court under section 92 of the code to proceed with the suit and that the basis of making valuation of suit has not been disclosed by the plaintiff.

Needless to mention while adjudicating an application under order VII, Rule 11, it is to be determined on the basis of averments made in the plaint and nothing else.

On perusal of the contents of plaint, the averments do not suggest that the suit is barred by law and that the court need not enter into the facts of the case. Moreover bundle of facts as narrated in the plaint in different paragraphs constitutes cause of action in terms of the prayer.

However, while adjudicating the application under Order VII, Rule 11 the Trial Court was erred in observing

that in the writ petition, being W.P. 14932 (W) of 2016, this High Court has decided the issue as to whether the trusteeship is a private trust or a public trust.

The opposite party, who appeared in person and the learned Counsel appeared on behalf of the petitioners both agree that the High Court never decided conclusively that the trust is a private trust. In such view of the matter I find that though the ultimate finding of the Court below that an application under Order VII, Rule 11 of the Code is liable to be rejected since the averments made in the plaint and the documents annexed thereto does not suggest that the suit is barred by any law or that the plaint does not disclose any cause of action but his observation that in view of High Court's observation there is no necessity to obtain any leave for instituting the suit is prejudged and the above observation of the Court below that the intention of the settler is to create a private trust, being influenced by aforesaid order, is pre-conceived. Though the ultimate finding of the Court below that the application under Order VII, Rule 11 is not applicable in the present context does not call for interference.

Learned Counsel appearing on behalf of the petitioner seeks to grant leave to file an application questioning the maintainability of the aforesaid suit, before

the learned Court below.

Leave is granted. The petitioners will be at liberty to file application questioning the maintainability of the suit within a period of eight weeks from the date of communication of this order and in the event of filing such application, the Court below will frame preliminary issue as to whether the suit is maintainable or not and before deciding any other issue, he will dispose of this issue first without being influenced by any observation made herein.

It is also made clear that the question as to whether the trusteeship is public trust or a private trust shall be kept open for disposal at the time of adjudication.

The revisional application, being C.O. 2286 of 2019 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)