

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

IA NO: GA/1/2024
APOT/63/2024
WITH
CS/43/2016

MALATI TULSHAN
VS
ABHISHEK AGARWALLA AND ORS.

-And-

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APOT/64/2024
WITH
CS/43/2016
MALATI TULSHAN
VS
ABHISHEK AGARWALLA AND ORS.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 15th May, 2024

Mr. Siddhartha Banerjee
with Mr. Arnab Dutt,
Mr. Sailendra Nath Chakraborty,
Mr. Sabyasachi Hazra &
Mr. K. Raihan Ahmed, Advs.
..for appellant.

Mr. Sakya Sen with
Mr. S. Mukherjee,
Mr. Ovik Sengupta &
Mr. Shiv Ratan Kankrania, Advs.
...for respondents/plaintiffs.

Mr. Swarnendu Ghosh with
Mr. Nirmalya Dasgupta,
Mr. Dibanath Dey &
Ms. Pallavi Pain, Advs.
...for respondent no.7.

After hearing learned counsel for the parties, we are in a position to
dispose of these appeals and connected applications by this common
judgement and order.

One of the principal objections of the appellant is that the suit was instituted without obtaining prior leave of the court under Section 92 of the Civil Procedure Code.

This is a hyper-technical point which we overcome by granting leave to the respondent plaintiffs to institute the suit, which would have retrospective effect, as if the leave was granted and thereafter the suit instituted.

There are other issues raised by Mr. Ghosh and Mr. Banerjee, learned counsel for the intervenors who have been subsequently added as parties.

Mr. Ghosh submits that the respondent plaintiffs have personal interest in the subject religious and charitable trust and thus have no locus to institute the suit.

Mr. Banerjee submits that even if the respondent plaintiffs are shown not to have personal interest, they do not have “an interest in the trust” as provided in Section 92 of the Code to maintain the suit. He adds that the scope of the suit and the reliefs sought therein, do not fall within the domain of Section 92 of the Code. The respondent plaintiffs in the instant suit are more interested in highlighting the internal disputes and differences between the trustees rather than attempting to promote the object and purposes of the public trust.

We are of the view that all these questions can be gone into in the suit after framing of issues, either preliminary or general issues. Only if any issue has been previously decided by this court, it shall not be framed as an issue. Otherwise, all points are kept open to be adjudged at the trial.

The impugned judgement and order to the extent it is in conflict with this judgement and order is set aside. Parts of it not in conflict with this judgement, are deemed to be modified by this judgement and order. However, the learned trial judge shall not be influenced by any observation

in the impugned judgement and order which shall only be taken to be prima facie.

Both the appeals (APOT/63/2024 and APOT/64/2024) along with connected applications are disposed of.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)