

(2016) 02 AHC CK 0260

In the Allahabad High Court

Case No : First Appeal From Order No. 232 of 2016

Ajay Mishra

APPELLANT

Vs

Raj Rajeshwar Ji Maharaj Virajman Mandir

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2016) 2 ARC 494

Hon'ble Judges : Krishna Murari and Raghvendra Kumar, JJ.

Bench : Division Bench

Advocate : Deepak Kumar Kulshrestha, Advocate, for the Appellant; Yogendra Kumar Srivastava, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Krishna Murari and Raghvendra Kumar, JJ.— Heard Shri Deepak Kumar Kulshrestha, learned counsel for the appellant and Shri Jitendra Kumar Rawat holding brief of Shri Yogendra Kumar Srivastava, learned counsel for the respondents.

2. The plaintiff-appellant has filed the appeal against the order dated 1.1.2016 passed by District Judge, Etah in Original Suit No.Nil of 2015 (Sri Ajay Mishra v. Shri Raj Rajeshwar Ji Maharaj Virajman Mandir and another), whereby the application under Section 92(1) of C.P.C seeking for leave of the Court, has been rejected.

3. It has been contended on behalf of the appellant that the learned Court below has failed to appreciate the facts averred in the plaint and has illegally refused to grant leave to institute a suit with respect to a public trust of a charitable or religious nature.

4. To appreciate the legal position Section 92 of the C.P.C is being reproduced herein below:-

"92. Public charities.- (1) In the case of any alleged breach of any express or constructive trust created 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 [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, 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 inquirers;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorising 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.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypres in one or more of the following circumstances, namely:-

(a) where the original purposes of the trust, in whole or in part,-

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such

instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,-

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust."

5. The phraseology used by the legislature under section 92 of Code of Civil Procedure categorically contemplates for institution of a suit with respect to a trust created for public purposes of a charitable or religious nature with the leave of the Court.

6. The pleading contained in the plaint is prima facie the basis for granting or refusing the leave to institute a suit. It is incumbent upon the plaintiff to prima facie establish that the trust was created for public purposes, which is of religious or charitable nature. In paragraphs 2 and 3 of the plaint, it has categorically been admitted by the plaintiff that Gata No. 1782 comprising of area 0.178 and Gata No.1783 comprising of area 0.899 situate at Kailashganj Etah, Town Etah, District Etah are non-ZA land and are recorded as public pond in the revenue records. The ownership of the same vests in Hon'ble Raj Rajeshwer ji Maharaj Virajman Mandir. As per the averments made in the plaint, a registered Waqf Deed was executed by its owner Raja Shivraj Singh Bahadur. Now the question crops up whether a public trust can be created by an individual with respect to a public utility land, which belongs to the public as a whole. No document of title has been filed on behalf of the appellant to establish that the land in question belongs to Raja Shiv Raj Singh Bahadur, who created the trust. And more so, for determining the nature of trust as being in the nature of public or private, it can safely be inferred by the document by which the alleged trust is said to have come into existence. From the averments made in the plaint, it is clear that the land in question is a public pond. How it vested in favour of Raja Shiv Raj Singh

Bahadur has not been explained ? If any land belongs to the public as a whole, how a public trust can be created by an individual. In absence of any documentary evidence, it cannot be inferred that the alleged trust is a public trust of a religious or charitable nature. The burden was with the plaintiff to discharge that the land in question was recorded as public pond and was in the ownership of Swami Raja Shiv Raj Singh Bahadur, which the plaintiff has utterly failed to discharge prima facie.

7. Section 92 of the C.P.C. provides for moving an application for leave to institute a suit by two or more persons having an interest in the trust. The application has been moved solely on behalf of the plaintiff. Plaintiff alone in terms of the explicit mandate of Section 92 of C.P.C. cannot move the Court for grant of leave to institute a suit under section 92 of C.P.C.

8. After perusal of the impugned order, we are of the considered opinion that learned Court below has not committed any error in passing the impugned order. The order is a reasoned one and has been passed on merits and no interference is required.

9. The First Appeal From Order is bereft of merit and is, accordingly, dismissed.