

(1916) 02 BOM CK 0023
In the Bombay High Court

Bapuji Jagannath

APPELLANT

Vs

Govindlal Kasandas Shah

RESPONDENT

Date of Decision : 14-02-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1916 Bom 281 : (1916) ILR (Bom) 439 : 34 Ind. Cas. 167

Hon'ble Judges : Basil Scott, C.J.;Heaton, J

Bench : Division Bench

Judgement

Basil Scott, C.J.—The plaintiff brought this suit as one of two surviving executors of the will of one Harjivandas Purshottam dated the 15th June 1892. The defendant executor is alleged to be an Audich brahmin of the age of 80, and is charged with having mis-applied the property of the testator, and prayer is that the defendant should be held responsible for all sums of money Which would be found to have been given, or caused to be given, to friends and relations, or proved to have been mismanaged, after taking an account from the year 1899 and onwards, since when he has been in sole management of the property of the late Harjivandas, and for a permanent injunction restraining the defendant from managing without the consent of the plaintiff and restraining the defendant from preventing the plaintiff from managing. The plaint is a document of some length, and contains no description of the trusts or directions contained in the will of the testator. But the suit may be treated as a general administration suit brought by one trustee against another with whose conduct he is dissatisfied, and the stamping of the suit as a suit for an account at the value of Rs. 150 does not prevent the Court from imposing an adequate Court-fee in the event of any decree being passed for the payment of money by the defendant.

2. That, however, is not the question now before the Court: it is whether the learned Judge in the District Court was wrong in remanding the case for trial after the suit had been rejected by the Subordinate Judge on the ground that it was a suit framed u/s 92 of the Civil Procedure Code, and as such could only lie

in the District Court. There is not a word in the plaint to suggest that the suit was framed in relation to any charitable or religious trusts. There is no prayer for relief of any of the kinds specified in that section, and upon the face of the plaint we see no reason for holding that the Subordinate Judge had not power to entertain the suit. That learned Judge, however, states in his judgment that from the will it appears that the property was worth about Rs. 89,500, out of which private legacies amount to Rs. 19,500, and the rest Rs. 70,000 are to be used for purely charitable and religious purposes.

3. The learned Joint Judge in appeal pointed out that it did not follow that because money was to be used for the benefit of charities, that therefore a scheme would be necessary in the case of those charities. In England the difficulty arising from superior and inferior jurisdictions does not arise, and any question relating to charitable bequests could be disposed of in an administration suit by the addition of the Attorney General, who corresponds to the Advocate General in this country, as a party to the suit. As an instance, we may refer to *In re Lea*, (1887) 34 Ch. D. 528 which was a general suit for administration. The report relates to a question arising with reference to a particular charitable bequest involving the question whether a scheme should be framed to whether money should be paid by the executors direct to the legatee named as the controller of the charity. It appears to us that if any questions relating to charitable bequests should arise in the present case before the Subordinate Judge, his proper course would be to give notice to the Advocate General in order that that officer might decide whether any action should be taken u/s 92 of the CPC in order to get any of the specific reliefs referred to in that section. It would be quite possible for the Subordinate Judge to continue the administration of the estate up to the point of separating the funds appropriated for particular charities as to which schemes would have to be framed, and holding those funds in the possession of a Receiver until the Advocate General or the Collector had obtained the directions of the Court, if such were necessary with reference to the disposal of those funds under some suitable scheme. Such directions of course would have to be taken from the District Court u/s 92. But we know nothing at present of the position of the charities in question. We do not know whether any schemes will be necessary, and it appears to us, as it appeared to the Joint Judge, that it will be altogether premature to say that this suit, as framed, cannot be disposed of by the Subordinate Judge.

4. The only other question which has been referred to is whether the Joint Judge was wrong in not giving effect to what has been described as an application for a decree in terms of the compromise. We have been referred to documents upon which the point is based, and it appears that there was no application for a decree in terms of the compromise. There was only a mention of a previous agreement, and it was requested that the Court would admit the papers on to the proceedings. According to the judgment of the Joint Judge the only issue raised before him at the time of the appeal was whether the lower Court had erred in holding that the suit fell within the purview of Section 92 of the Civil

Procedure Code, and that the Court had no jurisdiction to entertain it. Upon that issue we think that the Joint Judge was right in holding in the affirmative and in remanding the suit. We affirm the order and dismiss the appeal. Costs, costs in the cause.