
(2016) 03 CAL CK 0081
In the Calcutta High Court
Case No : F.M.A.T. No. 1025 of 2015.

Chandan Kumar Singha and Others

APPELLANT

Vs

Swami Bhabanandaji Maharaj @ Sumit Maharaj

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2016) 161 AIC 494 : (2016) 4 CalHCN 358

Hon'ble Judges : Jyotirmay Bhattacharya; Shib Sadhan Sadhu, JJ.

Bench : Division Bench

Advocate : Rabindra Nath Mahato, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J. - This first miscellaneous appeal is directed against an order being No. 14 dated 16th July, 2015 passed by the Learned District Judge, Paschim Midnapore in O.S. No. 01 of 2014 at the instance of the applicants/appellants.

2. By the impugned order, the appellant's application seeking leave to file the suit under Section 92 of the Code of Civil Procedure was rejected by the learned Trial Judge, by holding inter alia, that since as per the trust Deed, the applicants have no right to interfere with the management of the trust Deed, they do not have any locus standi to seek leave under Section 92 CPC. It is true that a public trust was created and mismanagement of such a public trust is alleged in this application. Now, a question has cropped up as to whether any member of the public can apply under Section 92 of the Civil Procedure Code seeking leave to sue simply by complaining mismanagement of the public trust.

3. To find out answer to the said question, we are required to consider Section 92 of the Code of Civil Procedure. Section 92 of the Civil Procedure Code runs as follows:-

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, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;]
- (d) directing accounts and inquiries;
- (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.

4. On plain reading of the said provision it appears to us that for instituting such a suit under Section 92 of the Civil Procedure Code, by the learned Advocate General of the State, no permission and/or leave from the District Judge is necessary. The said provision provides that two or more persons having interest in the trust and having obtained the leave of the Court may institute a suit whether contentious or not, in the principal of Court in the original jurisdiction or any other court empowered in that behalf by the State Government within the local limits of jurisdiction the whole or any part of the subject-matter of the trust is situated. The said provision thus makes it clear that no individual, even though he is interested in the management of the trust, can seek such leave. It is only two or more persons who have an interest in the trust, can seek such leave before the Court.

5. Here is the case where we find the three applicants applied for such leave. Reading the application in between the lines, We do not find any averment made therein fortifying that the applicants have any interest in the management of the trust or the trust Deed reposed any duty on them in the process of management of the said trust. The said applicants also do not claim that they are the beneficiaries under the trust and because of mismanagement of the trust

properties, they are deprived of enjoying the benefits, which they are otherwise entitled to enjoy under the trust.

6. When under such circumstances, the Learned District Judge refused to grant leave to the applicants to file a suit under Section 92 of the Code of Civil Procedure we do not find any reason to interfere with the said judgment and/or order of the learned District Court which is impugned in this appeal.

7. Accordingly, we do not find any reason to admit this appeal under the provision of Order 41, Rule 11 of the Code of Civil Procedure.

8. The appeal is, thus, dismissed.

9. Urgent Photostat certified copy of this order, if applied for, be supplied to the Learned advocate for the appellants immediately.