
(2010) 03 DEL CK 0157

In the Delhi High Court

Case No : C.S. (OS) No. 963 of 2002 and I.A. No. 4819 of 2002

Delhi Public School Society

APPELLANT

Vs

Delhi Public School

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10A

Citation : (2010) 03 DEL CK 0157

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K.C. Mittal, Puneet Mittal and Nitin Sharma, for the Appellant; Akhil Sibbal, Rohan Dheman and Pritika Kumar, for the Respondent

Judgement

S. Ravindra Bhat, J.—This suit is at the stage of framing of issues after the parties admitted and denied their respective documents. Learned Counsel were heard on the question of maintainability of the suit.

2. The plaintiff (hereinafter called DPS) seeks permanent and mandatory injunction and a decree of rendition of accounts against the defendant alleging that latter has unauthorisedly and contrary to law sought to appropriate and use the DPS style associated with it (the plaintiff). The suit averments are that the plaintiff society was registered in 1948, with the object of establishing progressive schools or other educational institutions in Delhi or its vicinity, accessible to all regardless of any distinction in caste, race or special status. The suit also states that several eminent personalities who attained distinction in diverse activities were associated with it in some form or the other including as members of the Management/Managing Committee. It is claimed that acronym together with the logo was created in 1950. Initially the plaintiff society established one school at Mathura Road. Later it established schools at Rohini, Gurgaon and various other places. The plaintiff states that it has 12 "Core" Schools, 60 "Satellite" Schools. It also alleges that they are managing 6 schools abroad. The plaintiff states that apart from the DPS logo it has a distinctive crest

design, associated with the society.

3. The suit alleges that the one Om Prakash Pathak, IAS who was posted at Ghaziabad in 1980 met the then Principle of Delhi Public School, Mathura Road for admission of his child and discussed the issue of quality education in Ghaziabad. This led to a proposal to establish or help in establishment of a school in the said township. The plaintiff refers to a meeting of the Working Committee of its society, dated 25.08.1990 held at DPS, Mathura Road where it was decided to establish two schools - one at Ghaziabad and one a NOIDA. The relevant extract of the said minutes of 25.08.1980 are as follows:

The Committee approved that the following two schools could be started in 1980/1981.

a) NOIDA

xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx

b) GHAZIABAD

i) The school will be called Delhi Public School Ghaziabad.

ii) This will run under a newly registered society of about 20-21 members - called the Delhi Public Society Ghaziabad in which the majority members will be from the Delhi Public School Society. The Chairman of DPS Society will also be the Chairman of Delhi Public School Society Ghaziabad. The Memorandum of Association and Rules and Regulations of the new society will be similar to those of our society. A Managing Committee will be appointed as in the case of our schools in Delhi.

iii) The financial liability for this school will devolve on the new society which would have to raise the necessary funds. The Delhi Public School Society will undertake no financial responsibility on this score.

iv) An area of about 30 acres is being acquired by the new Society, free of cost or at a nominal price.

v) A donation amounting to Rs. 2 lacs had been received and deposited in a separate account for the Ghaziabad School. It is hoped that the citizens of Ghaziabad, who seem very enthusiastic as also the administration under its dynamic District Magistrate and Collector, Mr. Om Pathak, will be able to collect donations of Rs. 10 - 15 lacs a year for the next 2 or 3 years. Dr. G.P.S. Waraich gave a detailed account of his meetings at Ghaziabad with officials and public men. His Accounts appears in brief t appendix (C).

4. The suit states that subsequently various discussions took place and another meeting was held in the residence of the District Magistrate, Ghaziabad on 08.09.1980. The Minutes of the meeting were recorded which marked the presence of Mr. Om Pathak, and others, who were interested in establishing a Delhi Public School at Ghaziabad. The said minutes of meeting have been

produced; which states inter alia that the parties decided to visit three places to finalize a suitable site for the proposed school. An ad hoc committee comprising of M/s. N.K. Bajaj, C.B. Aggarwal, H.L. Goel, Satish Mohan, Satish Kaura and Lt. Col (Retd.) Sadhu Singh was constituted. The plaintiff states that this Committee approached it formally along with certain proposals, seeking adequate financial backing. The plaintiff submits that a temporary site at Raj Nagar was approved till a permanent site was allotted; its Chairman Shri Dharam Veera was to use his good offices to secure an allotment from the Department of Industries, U.P. Government.

5. The plaintiff society submits that M/s. Deen Dayal, Lt. Col (Retd.) G.P.S. Waraich and Shri S.L. Dhawan were nominated by the Chairman of its society to work out the process and details for opening and functioning of the Ghaziabad school at a temporary site. It also mentions that about 7 persons were nominated from amongst its members as the ad hoc committee for that purpose. The meeting also recorded that a DPS society at Ghaziabad was to be duly incorporated and registered. The suit further mentions that the plaintiff society lent its name for the purpose of establishment of the school and helped in securing donations so that a society with the objective of establishing a school at Ghaziabad could be set up and registered. The plaintiff states that on 21.01.1981, Dr. Waraich, the then Principal was authorized by it to take possession of the land at Ghaziabad and hand it over to the defendant society.

6. It is submitted that in this background the defendant society was established and registered at Ghaziabad on 10.04.1981 with the objective of establishing progressive schools and institutions in Ghaziabad, accessible to all, regardless of caste, community, status etc. It is stated that the name, acronym and crest of the defendant society is similar to that of the plaintiff. The plaintiff contends that the entire arrangement of the defendant society was on the basis of the understanding that it would use the DPS acronym, name and logo as well as the DPS society permitted it to be so. The plaintiff also mentions that land was allotted to the defendant society, which thereafter took possession and constructed upon it. The details of this are mentioned in Para 33 of the suit; it is claimed that the plaintiff society's nominee Dr. Waraich handed over the bank draft in favour of the land owning agency, UPSIDC. The plaintiff alleges that it was clarified that while possession of the land was given to it for establishment of the Ghaziabad school, Dr. Waraich would continue to act as its (defendant's) Manager at Ghaziabad.

7. The plaintiff contends that a majority of the members of the defendant society were from its (the plaintiff) membership at the time of its establishment and the facts averred clearly establish that the defendant was to at all times to act further to and in the plaintiff's interest and not adverse to it. It is claimed that the defendant unauthorisedly set up a school at Vasundhara sometime in 1998-99, which compelled the plaintiff to issue a public notice stating that the action was unauthorized. The plaintiff submits that by virtue of amendment to

the Societies Registration Act, 1860 by the State of U.P., the registration of the defendant and the continued use of the "Delhi Public School" title is no longer lawful. It is stated that the cause of action in this case initially arose with the finalization of the proposal to establish the defendant school, in Delhi in 1980-81 and continued as long as such school functioned within the parameters of the understanding between the parties. The plaintiff states that the cause of action further arose on 06.08.1999 when it gave a public notice stating that the establishment of the school by the defendant at Vasundhara was unauthorized and contrary to law. It is submitted that the plaintiff is entitled to reliefs since defendant have not stopped or desisted from the continued user of the Delhi Public School mark, crest and logo and that the same amounts to unauthorized appropriation.

8. The defendant argues in its written statement, as well as through counsel that the suit nowhere discloses how this Court has territorial jurisdiction to entertain and try the present action. The defendant contends that the meeting dated 25.08.1980 and the minutes of meeting dated 08.09.1980 took place concededly, within the territorial jurisdiction of this Court, but that they cannot have any bearing on its functioning. It is submitted that none of the individuals who participated in those proceedings have been impleaded in any capacity before the Court nor can their views bind the defendant society, which is a juristic entity entitled to an independent existence in law.

9. The defendant argues that whatever be the understanding about the plaintiff's role vis-à-vis, once its (defendant society's) school was established, its affairs were required and to be indeed were managed, in accordance with the Constitution and Memorandum of Association. It is similarly argued that the mere circumstance that some members of the defendant society were the plaintiff's members, by itself did not and does not empower the former to exercise any manner of control over the defendant. On the other hand the entirety of circumstances between the year 1980-1999 all unerringly point to plaintiff's acquiescence and acceptance of use by the defendant of the name and style Delhi Public Society in relation to its school.

10. The defendant argued that even though the plaintiff has averred about an understanding regarding the use of the DPS or Delhi Public Society name by the Ghaziabad school, there are no particulars as to when and what were the terms of such understanding and who arrived at such agreement. It is argued that such vague averments cannot be the basis of any legitimate claim for equitable relief like injunction.

11. The defendants argued that the filing of the suit in this Court is an abuse of process of law since there is not even a whisper in the pleadings by the plaintiff about the cause of action or any event, a miniscule part of it within the territorial jurisdiction of this Court. It is submitted that discussions and recording of certain minutes within the plaintiff society in 1980 (i.e. 25.08.1980 and 08.09.1980) in Delhi might have been precursors and have preceded the setting up of the

Ghaziabad school and establishment of a society. Once established, however, the Ghaziabad school was permitted to function and if at all there is any cause of action on account of the latter's deciding to establish a school in Vasundhara, no part of the cause of action upon which the suit is premised occurred in Delhi or in any part of Delhi. It is emphasized that the defendant society is located in Ghaziabad, and is seeking to establish its other schools in the district of Ghaziabad and that it is also registered in the State of U.P. These clearly constitute the plaintiff's essential grievance for which a suit cannot be filed in the Delhi High Court.

12. From the above discussion it is apparent that the narrow question, which the Court is to decide is whether the suit is maintainable in the Delhi High Court. It is now well settled that while deciding the question of jurisdiction the Court has to confine itself to the pleadings and averments in the suit as well as the list of documents filed along with it. The overall conspectus of the pleadings would show that there appears to be no dispute about the following facts:

- 1) The defendant society was incorporated and registered at 10.04.1981 in Ghaziabad, with the Registrar of Society at Ghaziabad.
- 2) The defendant society has established and is managing a school in Ghaziabad.
- 3) It is also establishing other schools in the State District of Ghaziabad
- 4) The proposal of establishing the defendant society and school emanating from discussions held in the plaintiff society on 25.08.1980 and certain minutes of meeting supposed to have taken place on 08.09.1980.
- 5) It is not disputed that these proposals and decisions were discussed and taken before the establishment of the defendant society; it is also not in dispute that the defendant society is not party to such decision.
- 6) The defendant society after its incorporation was allotted lands. It is bound by terms of its Memorandum of Association and bye-laws which are registered under the Societies Registration Act.
- 7) The plaintiff society gave initial impetus by way of deploying staff and assisting in the management of the defendant school for the period 1981-1982. Thereafter the defendant has been running the school independent of the plaintiff.

13. The CPC does not define "what is cause of action". However it is recognized that a cause of action is a bundle of facts or features which enables a litigant to seek relief and found his claim in a Court of law. In this case, the plaintiff seeks injunctive relief. It is not the plaintiff's society's case that the "DPS Society" or "DPS" mark is a registered trade mark or was a registered trade mark at the time of filing of the suit. The claim is not one for infringement. The claim is, however, akin to passing off since the defendant is concededly using the same name and style "Delhi Public Society, Ghaziabad". However, the defendant is located in Ghaziabad; its first school was established and continued to be run in

Ghaziabad. The provocation for plaintiff to complain of unauthorized and unlawful behavior by the defendant is the establishment of another school in Vasundhara which too is outside the territorial jurisdiction of this Court.

14. Although the plaintiff mentions about the understanding with the defendant, there are no particulars as to when such understanding or agreement with regard to the use of its name or style was reached. There is no documentary evidence in support of such a plea. The plaintiff is essentially relying upon the minutes of meeting dated 25.08.1980 and of its Governing Body and the minutes of meeting dated 08.09.1980. As discussed earlier, these minutes no doubt point to the decisions taken for the establishment of the defendant society. However, there is no attempt made by the plaintiff to show how they bind the said defendant. The preliminary steps for setting up of a society at best, are indicted in these documents. However, there is no averment made by the plaintiff to show how such documents and even if they are assumed to bind the defendant constitute a cause of action.

15. The plaintiff has not pleaded that it owns the defendant school or has any measure of significant control or exercises such control over it. Its plea is that according to the initial understanding several of its members became members of the defendant school and some of them were on its governing council. However, there is no condition in the Memorandum of Association or any other bidding, bye-law or regulation of the defendant society which reflects this position. The said Memorandum of Association, registered at the time of establishment of the defendant society, is part of the record. In these circumstances, this Court is of the opinion that the mere existence of some documents evidencing the plaintiff's role in the establishment of the defendant society cannot be said to constitute cause of action or part of it, arising in Delhi. Those events concededly occurred at least 20 years before the suit was filed and did not have a bearing on the immediate provocation of the filing of the suit.

16. The facts taken in their proper perspective clearly show the plaintiff's grievance is with respect to the use of the "Delhi Public Society" name and style by the defendant in respect of the school established by the latter at Vasundhara. The plaintiff has relied upon a brochure issued by the defendant society and also placed his reliance on a notice issued on 03.01.2002. In the circumstances of this case, in the absence of any attempt by the plaintiff to show that such schools were extensively advertised in Delhi or that admissions were solicited within Delhi or the school children from Delhi were enrolled in the school in Vasundhara, the fact that such process was issued in respect of an institution located clearly outside the territorial jurisdiction of this Court, is insufficient to maintain the present suit.

17. In view of the above reasoning, it is held that this Court lacks territorial jurisdiction to entertain and try the suit. The present civil suit is accordingly returned to the plaintiff to be filed before the appropriate Court, i.e. District Judge, Ghaziabad. The parties are directed to appear before the District Judge,

Ghaziabad in accordance with the provisions of Order 7 Rule 10A, Code of Civil Procedure, 1908 on 3rd May, 2010, for further proceedings.

18. The suit and all pending applications are accordingly disposed of.