

(1978) 08 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : Civil Original Petition No. 1 of 1978

Krishen Kumar Khosa

APPELLANT

Vs

Krishen Lal and Others

RESPONDENT

Date of Decision : 22-08-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Jammu and Kashmir Constitution Act, 1996 — Section 102, 56(2)
Trusts Act, 1882 — Section 34

Citation : (1978) 08 J&K CK 0006

Hon'ble Judges : G.M. Mir, J

Bench : Single Bench

Advocate : S.P. Gupta, for the Appellant; R.P. Bakshi, for the Respondent

Final Decision : Dismissed

Judgement

G.M. Mir, J.—In this application u/s 34 of the Trusts Act it has been stated that in the city of Poonch a Dharamshalla known as Waziri Deni

Sahib Dharamshalla exists and with this Dharamshaila large chunks of land and other Immovable property was attached. A school was also being

run by the trust of which Bhai Dharam Dutt was the Managing trustee and sole patron. Shri Bhai Dharam Dutt was known as Shri Guru Maharaj.

He passed away on 9-5-1978. By a will dated 23-4-1972 Shri Guru. Maharaj had appointed Shri Krishen Lal, respondent No. 1 as his

successor but this will was revoked by him on 17-8-1975. It was on 21-11-1977 that Shi Guru Maharaj executed a document is favour of the

petitioner appointing him Mohatamim of the Trust superseding all previous appointments and documents executed in this behalf by him. Under this

document Shri Guru Maharaj provided that the petitioner was to be the Managing head and patron temporarily till another Managing trustee was

appointed according to the terms of the document. Also a committee to manage the affairs of the trust was appointed. The document further stated

that the petitioner will surrender his rights to the permanent Managing trustee who shall be so appointed later. There were some other recitals made

in the deed. In direct contravention of the contents of this document, the petitioner states, that after the death of Sri Guru Maharaj, respondents 1

and 2 have forcibly taken over the possession of the property of the trust and usurped the functioning of the petitioner, as well as of the Managing

Committee. It is further alleged that respondent No. 1 has set himself up as the male heir trustee of Shri Guru Maharaj which he could not have

done in view of the document executed by Shri Guru Maharaj on 21-11-1977. Under the circumstances it has become difficult for the petitioner to

discharge the duties and functions entrusted to him under the document executed by Shri Guru Maharaj. In para 19 of the petition, it has been

specifically prayed that this Court may give a declaration to the effect that:

(i) respondent No: 1 is not a legal Managing trustee;

(ii) he cannot administer or reveal any Guru Mantra to any person interested in the institution;

(iii) he cannot act in contravention of the contents of the document executed by Shri Gum Maharaj;

(iv) though he is a relation of Shri Guru Maharaj he is not entitled to work as a trustee in accordance with the said document; and

(v). respondent No: 2 cannot act as Secretary to the Managing Committee. It is prayed that a direction in this regard be given after due

consideration of all the circumstances narrated above. An affidavit in support of these contentions was also filed.

2. Mr. R.P. Bakshi filed objections on behalf of respondents 1, 6 and 7. He raised many objections and inter alia stated that the petition is not

maintainable as the same had to be filed u/s 34 of the Trusts Act in the principal Civil Court of original jurisdiction which in the instant case was the

Court of District Judge, Poonch. His second preliminary objection was that the petitioner not being a trustee, has no locus standi to file an

application u/s 34 of the Trusts Act. His third objection was that the petition was not maintainable as the same was not filed for seeking opinion,

advice, direction from the court regarding any present question for management

or administration of the trust property. It was further stated in the objections that from a mere perusal of the contents of the petition, it would be apparent that what the petitioner was seeking was neither advice nor direction nor opinion but he was seeking the removal of respondent No. 1 from the management and trustship of the trust property, which could not be done u/s 34 of the Trusts Act. It was further stated in the objections that questions of detail, difficulty and importance being involved in the petition, the same could not be entertained under the provisions of the Trusts Act.

3. In view of the importance of the objections raised, the learned Counsel for the parties advanced their arguments.

4. The first objection raised was that Section 34 of the Trusts Act envisages a petition being submitted in the principal Civil Court of original

jurisdiction and in this case that court was the court of the District Judge, Poonch. It was contended by Mr. Bakshi that Section 34 of the Trusts

Act specifically lays down a forum for consideration of such petitions and by implication it would mean that no other forum would have the

jurisdiction to entertain a petition u/s 34 of the Trusts Act. For the sake of convenience Section 34 of the Trusts Act is reproduced below.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice, or direction

on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance,

not proper in the opinion of the Court for summary disposal.

In view of this Mr. Bakshi submitted that the forum chosen by the petitioner for filling the application u/s 34 of the Trusts Act has no jurisdiction to

entertain and dispose of the matter. It was admitted by Mr. Gupta that the principal Civil Court of original jurisdiction with reference to the matter

at hand was the District Court at Poonch, but he contended that in view of the variation put by him at Rupees Two lakhs in the petition, the only

court to which an application u/s 34 of the Trusts Act would lie under the circumstances, would be the High Court which alone has the jurisdiction,

to try the suits and proceedings of such valuation. He contended that the High Court is a court of record and by virtue of Sub-section (2) of

Section 56 of the J&K Constitution Act of 1996 the High Court has been declared to have jurisdiction to hear and determine any original civil suit

or other proceedings of which the value is not less than Rs. 10,000/-, and every such suit or proceedings has been directed to be instituted in the

High Court. Elaborating this contention further Mr. Gupta submitted that the Jurisdiction conferred on the High Court vide Sub-section (2) of

Section 56 of the Constitution Act of 1996 has been kept in tact and saved vide S, 102 of the J&K Constitution, and as such all suits and

proceedings the valuation of which exceeded Rs. 10,000/- have to be instituted in and tried by the High Court. This contention however is

fallacious. No doubt the High Court is a court of record and under the provision of the Constitution Act of 1996 all suits and proceedings, the

valuation of which was Rs. 10,000/- or above had to be instituted in the High Court yet Section 102 of the J&K Constitution while saving the

existing jurisdiction of the High Court has specifically laid down that ""subject to the provisions of this Constitution and to the provisions of any law

for the time being in force, the jurisdiction of the High Court ... shall be the same as immediately before the commencement of this Constitution.

The powers and jurisdiction of the High Court no doubt have been saved u/s 102 of the J&K Constitution but the savings are subject to the

provisions of the Constitution and to the provisions of any law for the time being in force. The Trust Act was in force at the time the J&K

Constitution was framed and enforced. The jurisdiction of the High Court is therefore, subject to the provisions of the Trusts Act, and the Trusts

Act manifestly confers the powers of hearing a petition u/s 34 on the principal Civil Court of original jurisdiction, which is the District Court. The

petition therefore, u/s 34 of the Trusts Act is to be heard and tried only in the court of District Judge irrespective of the valuation of the subject-

matter placed by the petitioner. I am therefore, not in agreement with Mr. Gupta when he says that this Court has the jurisdiction to entertain a

petition u/s 34 of the Trusts Act in view of the provisions of the Constitution.

5. From a bare perusal of the petition it becomes obvious that the petitioner is not in possession of the Trust property but is desirous of getting

himself declared a trustee in opposition to respondent No. 1 who according to him, has usurped his functions to which he was entitled to under the

Guru Jee's alleged will. Obviously the petition was not for seeking any advice, opinion or direction from the court. It raised questions of difficulty

detail and of importance which could not be disposed of in summary proceedings as one at hand. Mr. Gupta has vehemently argued that he was

entitled to seek the direction from the court which would according to him include even a declaration to the effect that it was in fact the petitioner

who was the trustee and not respondent No. 1. He has cited some authorities such as Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar

Bhagwandas, Lakhimpur Kheri, , and AIR 1966 SC 81 in support of his contention that the expression ""direction"" means and includes an order of

the court and does not merely mean an advice or opinion On a perusal of these judgments I am however, of the view that the expression 'direction'

as used in the Trusts Act Has entirely a different meaning than the meaning that may have been given to it in various other enactment discussed in the

above said judgments Though Mr. Gupta has remarked the) interpretation laid down on the expression ""opinion, advice, and direction"" appearing

in Section 34 of the Trusts Act in AIR 1934 118 (Oudh) and AIR 1934 Oudh 118 (2) being the interpretation laid down long ago and therefore

not applicable to the situation prevailing in 1978, yet I am of the view that the meaning of the expression used in Section 34 of the Trusts Act

having been directly at issue in the said judgments, the interpretation placed in the said judgments, on this expression was not only appropriate and

correct at the time of the passing of the said judgments but still continue to be the only interpretation that may possibly be given. In AIR 1945 Sind

81 (supra) it has been laid down as follows:

The words ""opinion, advice, or direction"" in Section 34 Trusts Act, must be read together as meaning nothing more than guidance. u/s 34 the Court

exercised what may be called its consultative jurisdiction, giving guidance to a trustee who presumably asks for it, because he wants it and intends

to follow it, Section 34 is intended to enable a trustee to obtain the Court's guidance in suitable matters for his protection. The advice, opinion or

direction given u/s 34 is not an order binding on parties and disobedience to it does not involve committal for contempt....

I am in respectful agreement with this interpretation of the crucial words appearing in Section 34 of the Trusts Act. Judging the petition at hand in

this context, it is obvious that the petitioner does not seek any guidance but a declaration involving questions of detail and importance. From the

contents of the petition it appears that the petitioner seeks a declaration to the effect that he and not respondent No. 1 is entitled to the office of the trustee. The proper remedy in such a case would be a suit u/s 92 of the CPC and not an application u/s 34 of the Trusts Act or under any other provision of the Act. In *Avoch Thevar Vs. Chummar*, it has been laid down that Section 34 of the Trusts Act provides for the trustees right to apply to the Court for opinion, advice or direction in the management of the trust property and at the same time it embodies the limitations covering such matters. Even if a petition is filed by a proper person u/s 34 of the Trusts Act but it involves matters of difficulty or importance not proper in the opinion of the court for summary disposal the petitioner could be given no relief except a direction to file a proper suit. Sec. 34 of the Act envisages circumstances in which a trustee seeks guidance to safeguard his rights and to have the protection of the Court. It does not envisage a situation where a person claiming to be a trustee can be installed as such by an order of the Court.

6. Mr. Gupta in his replication has submitted that even if it was found that the petition u/s 34 of the Trusts Act was not maintainable, the same may be treated as a suit and as the valuation given by him was Rupees Two Lakhs, the High Court alone has the jurisdiction to try the same. It appears that entirely a new matter has been introduced in the replication which could not be entertained. The petitioner could not be entertained. The petitioner could not be permitted to blow hot and cold in one and the same breath. It is not a question of treating a revision petition as an appeal or vice versa. A civil suit under the CPC would be entirely different from the proceedings u/s 34 of the Trusts Act. The petition u/s 34 of the Trusts Act cannot be as such treated as a Civil Suit.

7. The preliminary objections raised by Mr. Bakshi are, therefore, upheld and the petition is as such dismissed. I however make no order as to costs.