
(2011) 10 DEL CK 0079
In the Delhi High Court
Case No : CS (OS) No. 441 of 2003

Ms. Vanita Sarin and Another	Vs	APPELLANT
Skin Institute and Public Services Charitable Trust and Others		RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2011) 10 DEL CK 0079

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Subodh Kr. Pathak, for the Appellant; Neeraj Kishan Kaul, with Mr. Vikas Mehta and Ms. Aditi Bhatt for Defendant Nos. 1 to 5 and Mr. Rajiv Bahl, for Defendant no. 6, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Plaintiffs have filed this suit for permanent injunction, mandatory injunction and rendition of accounts against the defendant nos. 1 to 6. It is prayed that defendant nos. 2 to 5 be removed as Trustees of defendant no. 1; defendants be restrained from interfering with the working of Trust by the plaintiffs; defendant nos. 2 to 6 shall render the account with regard to the supplies made by the defendant no. 6 to the defendant no. 1 and thereafter defendant no. 6 be directed to refund the excess amount charged by him to the Trust and defendants be restrained from operating the bank account of the Trust.

2. It is alleged in the plaint that the plaintiffs are husband and wife. Plaintiff no. 1 is daughter of Late Dr. P.N. Behl, who constituted a trust known as "Skin Institute and Public Services Charitable Trust" ("Trust" for short) during his lifetime. Trust was constituted vide Trust Deed dated 17th March, 1969 for providing, inter alia, medical aid to the patients suffering from skin diseases. Late Dr. P.N. Behl was the Managing Trustee during his lifetime. Plaintiff no. 1 was also one of the Trustees. After the marriage of plaintiff no.1, plaintiff no. 2 was co-opted as one of the trustees. All along, plaintiffs had been actively

participating in the administration of the Trust. In the Board meeting dated 14th July, 2001 plaintiff no. 2 was removed from the list of Trustees in violation of the terms of Trust Deed. However, plaintiff no. 1 continued as a Trustee. The meeting was held without any notice to the plaintiffs. Minutes of meeting were not challenged by the plaintiffs since the father of plaintiff no. 1 Late Dr. P.N. Behl was seriously ill during that period. "Skin Institute and School of Dermatology" at Greater Kailash, Part-I, New Delhi and "Skin Institute of Dr. Behl Holistic Health Centre" at Ashok Vihar, Delhi used to be run by the Trust. Defendant nos. 2 to 6 mismanaged the affairs of Trust and the institutes run by it. Defendant no. 6 has been wrongfully and illegally interfering in the day to day affairs of the institutes. He has misappropriated the funds of the institute in connivance with the other defendants. Plaintiffs have not been allowed to participate in the management and administration of the Trust since July, 2001. Defendant no. 6 has supplied medicines to the institutes of the Trust at higher prices from his own firm known as "SISD Pharmacy". This fact was brought to the notice of Late Dr. P.N. Behl just prior to his death. Administrative Officer of the institute was removed on account of these irregularities. Plaintiffs have every right to participate in the affairs of Trust. Late Dr. P.N. Behl has left behind a registered Will dated 24th August, 2000 wherein there is no mention of the Trust and properties. In order to mislead the general public and to gain access to the management and administration of the affairs of the Trust, defendant no. 6 got executed another registered Will dated 31st January, 2002 from Late Dr. P.N. Behl at Ghaziabad. This he did by taking advantage of the fact that before his death Late Dr. P.N. Behl was suffering from renal failure and was under heavy medication. In these facts reliefs as stated in para 1 have been claimed.

3. Defendant nos. 1 and 3 to 5 have filed a composite written statement; whereas defendant no. 6 has filed a separate written statement. Defendants have denied the allegations leveled in the plaint. As per defendants, plaintiffs were not having good relations with Late Dr. P.N. Behl, who was living separately right from 3rd August, 2001 onwards. Late Dr. P.N. Behl had even disowned and disinherited the plaintiffs through a public notice published in the newspaper "Indian Express" dated 3rd April, 2002 whereby he made it clear that plaintiffs would have no concern whatsoever with defendant no.1-Trust. Dr. P.N. Behl died on 15th October, 2002. It was alleged that plaintiffs retired and/or removed from the Trust during the life time of Late Dr. P.N. Behl. Plaintiffs have suppressed this material fact. It was also denied that Trust was mismanaged by its Trustees i.e. defendant nos. 2 to 6. It was also denied that affairs of the Trust or that of the institutes were mismanaged by any of the Trustees at any stage. It was denied that plaintiffs were actively involved in the administration and affairs of the Trust till July, 2001. It was denied that defendant no. 6 had supplied the medicines to defendant no. 1 at higher price. In nutshell, case of the defendants as set up in the written statement is that the affairs of the Trust were never mismanaged.

4. Plaintiffs have filed replication(s) wherein they have denied the allegations made in the written statement and have reiterated and reaffirmed the averments

made in the plaint.

5. From the pleadings of the parties following issues were framed on 22nd April, 2009:

1. Whether the suit of the plaintiffs as framed is maintainable u/s 92 CPC? OPP

1A. Whether the plaintiffs have the locus standi to file the present suit? OPP

2. Whether the suit is bad for non-joinder of proper or necessary parties? OPD

3. Whether there is any mismanagement in the affairs or administration of the defendant no.1 trust? If so, to what effect? OPP

4. Whether the plaintiffs are legally entitled to look after the administration and affairs of the defendant no. 1 trust as claimed by them being the family members of Late Dr. P.N. Behl? OPP

5. Whether the plaintiffs are entitled to any decree for permanent and mandatory injunction and for rendition of accounts as claimed by them?

6. Relief.

6. Despite several opportunities granted to the plaintiffs they have failed to lead any evidence. Plaintiffs? evidence has been closed vide order dated 5th February, 2010. Defendants have also not led any evidence as the plaintiffs failed to lead evidence in support of their case. I have heard the arguments.

7. I have heard learned counsel for the parties and have perused the record and my issue wise findings are as under :

Issue nos.1, 1(a), 3 to 5

8. Onus to prove these issues was on the plaintiffs. However, plaintiffs have miserably failed to prove these issues as no witness has been examined by the plaintiffs. The averments made in the plaint, relevant for the above issues, have remained unsubstantiated. Plaintiffs have failed to prove that they have been illegally removed from the Trust or that defendant nos. 2 to 6 have mismanaged the Trust or that defendant no. 6 has misappropriated the funds. Accordingly, all the above issues are decided against the plaintiff. Issue no.2

9. No evidence has been led by the defendants, inasmuch as, this issue has not been pressed during the hearing.

Issue no. 6

10. In view of the findings returned on issue nos. 1, 1 (a) and 3 to 5, plaintiffs are not entitled to any relief. Suit is dismissed. No order as to costs.