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(1976) 04 SC CK 0036

In the Supreme Court Of India

Case No : Civil Appeal No''s. 443 and 444 of 1976

Mulla Alibhai and Others — APPELLANT

Vs

Madrasai Hakimia and Coronation High School and Others, etc. — RESPONDENT

Date of Decision : 20-04-1976

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1976 SC 1476

Hon'ble Judges : R. S. Sarkaria, J;P. N. Shingal, J

Bench : Division Bench

Advocate : B.Sen, for the Appellant;

Final Decision : Allowed

Judgement

R.S. Sarkaria, J.—Controversy in these appeals by special leave relates to the interpretation and clarification of the judgment and decree of this Court in the case reported as Sheikh Abdul Kayum Vs. Mulla Alibhai, . The appeals arise in these circumstances:

2. In the year 1902, certain members of Daudi Bohra Community of Burhanpur started a School, named Madrasai Faize Hakimia. Its primary object was to impart religious and secular education to boys of the Daudi Bohra Community. Funds were collected for the purpose of the school from the members of the community. The school prospered, and in the year 1911, it was raised to the status of High School under the name, "Madrasai Hakimia and Coronation High School." Earlier on May 24. 1909. one Daudi Bohra of Surat, named Abdul Hussain Abdullali Faizullabhai Muchhala, made a waqf of certain properties in Bombay for the benefit and advantage of this school. For the management of the Trust, he appointed 12 persons who were already functioning as trustees of the school. A few months later another trust came into existence for the benefit of the same School under a deed of Waqf and Trust (Ex. P-3) executed by six persons of Daudi Bohra Community of Burhanpur. eighteen persons including the

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executants of the trust-deed were named as trustees. It is stated in this deed that all movable and immovable properties connected with the School shall vest in these trustees who will also be entitled to govern, manage and administer the affairs of the School and shall have the power to frame rules and regulations from time to time for the benefit and. efficient running of the School, and also have the power to appoint new trustees from time to time in accordance with such rules and regulations. These trustees managed the School and its properties including the properties of which Waqf was made in its favour under the Trust Deed of September 15, 1909.

3. On or about the 19th March 1917, 4 out of the 18 who were appointed under the Trust Deed, dated September 15, 1909, along with 3 other members of the Bohra Community of Burhanpur, formed themselves into a Society named Madrasai Hakimia and Coronation High School Society and got it registered, under Act XXI of 1860. The Society assumed the administration and management of the School and of all the properties movable (properties) and immovable endowed and dedicated for the purpose of the education in the said School. One group of non-believers of the Bohra Community refused to acknowledge Mullaji Taher Saifuddin Saheb, as 'Dail Mutalaq'. This led to litigation which went up to the Privy Council.

4. In 1936, certain members of Daudi Bohra Community of Burhanpur filed a suit for a declaration that certain properties were the subject-matter of a public Trust for the education of the students of Daudi Bohra Community of the School. The trial Court dismissed the suit. But on appeal. the Nagpur High Court passed a decree declaring that the properties described in List 'X', annexed to the decree were the subject-matter of the public trust of a religious and charitable nature for the benefit of Daudi Bohras irrespective of their persuasion.

5. On January 13, 1947. 4 members of the Daudi Bohra Com munity residing at Burhanpur, instituted, with the consent of the Advocate-General, a suit u/s 92 of the CPC. It was alleged that the defendants were not validly appointed trustees and had wrongfully assumed administration of the Trust and its properties. It was further alleged that defendants had committed various breaches of the trust. On these premises, the plaintiffs prayed:

(a) That it may be declared that the defendants are not validly appointed trustees of the trust proper ties mentioned in Exh. D-List X hereof.

(b) That the defendants may be removed from the management of the said properties mentioned in Ex. D List X hereof. (a) That the defendants may be ordered to render on account of their administration of the said trust properties.

(c)That for the aforesaid purposes all necessary directions may be given, orders passed and enquiries made.

(d) That some proper and fit persons should be appointed trustees of the said trust properties in accordance with the provisions of the Trust-deed of 15th

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September 1909.

(e) That in so far as it is necessary a scheme may be framed by this Honourable Court for the administration of the said trust.

(f)that pending the hearing and the final disposal of this suit some fit and proper person may be appointed Receiver of the said institutions in accordance with the provisions of the said trust-deed, dated 15th September 1909 and objects mentioned in the said trust-deed, dated 24th May 1909.

6. The suit was dismissed by the trial Court against defendants 2 to 11 on the condition that they would deposit Rs. 15596/5/8 P. which they were found to have misapplied out of the trust fund. A decree was passed for the removal of defendants 2 to 17 from the trusteeship of Muchhalla trust property. These defendants were ordered to deposit in court the amount collected by them from the trust property and were forbidden to recover any income from the property after the date of the decree.

7. The plaintiffs went in appeal to the High Court who dismissed the same. Another appeal was preferred by defendants 2 to 17 against the trial Court's judgment.

8. The High Court dismissed both the appeals as also the cross-objections filed by defendants 1, 2, 4, 5, 9 and 10 and completely affirmed the decision of the trial Court. Against the High Court's decision two appeals were filed in this C art, one by the plaintiffs and another by defendants 2 to 12, 14, 17 by special leave granted by this Court

9. This Court allowed the appeals and held that defendants 1 to 11 were not validly appointed trustees in respect of the trust properties mentioned in List M annexed to the plaint and directed that the defendants be removed from the management of these properties and be further ordered to render account of the administration of the said properties.

10. Pursuant to the decree of this Court, the decree-holders took out execution for rendition of accounts against the judgment-debaters. They claimed rendition of accounts for the period 1917-1962, of the management and administration of the School. The contention of the decree-holders was that the description of properties of Hakimia School building in List 'M' would include income and expenditure relating to the management and running, of the School and also of the furniture, laboratory and other material kept in the building for running the School. The judgment-debtors however objected that they were not liable to render any account of the School administration and that the trust properties described as Hakimia School Building in List 'M' means only the account of the structure of the building. The District Judge dismissed the objection of the non-applicants and held:

Property 'M' does not include only the building or plots and fields but it includes the accounts of properties covered in List 'M' in their running condition.

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11. Thus the construction put by the District Judge on this Court's decree was, that the judgment-debtors were required to render accounts not only of plots, buildings specified in the List but also of the institution and business concern located thereon.

12. The judgment-debtors carried appeals to the High Court against the orders of the District Judge. The appeals were heard by a learned single Judge (Raina J.) who did not agree with the construction put by the District Judge on this Court's decree. It was observed:

There is a clear distinction between the school and its building. A school building is a building in which the school is located. A per son in charge of the building may have nothing to do with the school and vice-versa. The administration of the Hakirnia school building does not, therefore include the administration of the school itself It maybe that the school and its building may be in charge and management of the same person or the body of persons, but the plaintiff cannot be permitted to enlarge the scope of their claim at this stage which must be confined to what was claimed in the plaint and was decreed The decree of the Supreme Court calls upon the appellants to render accounts of their administration of the trust properties specified in the list 'M' and the list must be construed in its ordinary grammatical sense.

13. In this connection it was further pointed out that in F.A. 36 of 1939 arising out of Civil Suit 5-A of 1936, the properties belonging to the School were expressly excluded from the declaration of the trust and it was for this reason, the plaintiff confined their claim to the proper ties specified in List 'M'. The learn ed Judge conceded that the judgment-debtors while functioning as trustees of the properties belonging to the School had hand in the management of the School but felt that "at this stage, it would not be permissible to travel beyond the decree". On these premises, it was concluded that there is no justification for the view that the judgment-debtors are liable under the decree to render accounts of the School as an institution. In the result. he al lowed the appeals and set aside the order of the lower court requiring the judgment-debtors to render ac counts of the School as a running institution.

14. Mr. Nariman for the appellants contends that the decree of this Court when construed in the light of the pleadings and the judgment of this Court leaves no doubt that the defendant-respondents were required to render accounts not only of the School building consisting of brick and mortar, but also of the administration of the School as an institution located therein.

15. On the other hand, Mr.B. Sen, submits that the movable properties of the School including books, furniture, stationery etc. were not included in the trust properties (mentioned in List 'M') which were the subject-matter of the dispute. In support of his contention that these moveable properties were not trust properties. Counsel has referred to Exhibit 'D' List 'X' annexed to the decree dated October 10, 1942 of the High Court in Appeal No. 36 of 1939. Stress has

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also been placed on the fact that in the decree-sheet as originally drawn up by the office of this Court, it was directed that the defendants shall render accounts not only of the administration of trust properties mentioned in List 'M' but also of "all the moveable and Immovable properties of the School; but on the application of the defendants the decree was amended by this Court and the reference in the decree to properties of the School was deleted. Against this back ground, it is maintained, the interpretation put by the High Court on this Court's decree, is correct.

16. In order to appreciate the contentions canvassed, it is necessary to have a short and swift look at the material terms of the trust-deed, the pleadings, the issues and the judgment, dated August 17, 1962, of this Court. Clause (5) of the trust-deed, dated September 15, 1919, says inter alia that "all the properties movable and immovable connected with the School shall vest in the trustees."

17. In Para. 15 of the plaint, there is a reference to the suit No. 5-A which was instituted in 1936 for a declaration that the properties mentioned therein were the subject- matter of public trust of a charitable or religious nature for the education of the students of the Daudi Bohra Community in the Madrasai Hakimia and Coronation High School and for other reliefs. There is a further reference to the decree pass ed by the High Court in Second Appeal (Appeal No. 36 of 1939) on October 10, 1942. This decree is based on an award, dated July 20, 1942, declaring that the properties mentioned in Ex. D List X annexed thereto, were the subject-matter of the public trust and vested in it for the benefit of the Daudi Bohras irrespective of their persuasion. The aforesaid award first mentions the questions referred to arbitration and then against these questions. the findings of the arbitration:

18. Question No. (1) was to the effect:

Are the properties referred to in paragraph 3 of the plaint and Schedule A annexed thereto in Civil Suit 5A of 1936. the subject-matter of public trust of religious or charitable nature for the benefit of Daudi Bohras only?

In regard to this, the arbitrator found:

1 (a) No award is made in respect of the following items of the properties referred to in Para. 3 of the plaint and Sch. A annexed thereto...as the plaintiff does not now want any declaration with respect to them (vide his compromise petition dated 20-7-1942) as these properties are not, according to him, in possession of the defendant being either sold or dismantled or not given possession of by the donor:

Item IV as shown in Schedule 'A' attached to the plaint.

This item reads:

All movable properties consisting of school and Boarding house furniture, books, science apparatus, stationery articles and all sorts of goods chatties, vessels and

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sundry goods belong to Madrasa-i-Hakimia and Coronation High School (valued at Rs. 25,000/-).

Para 1 (b) of the award says:

all the other properties referred to in paragraph 3 of the plaint and Schedule 'A' annexed thereto in Civil Suit No. 5A of 1936 which are mentioned in the accompanying Schedule 'K' are the subject-matter of the public trust of religious or charitable nature for the benefit of education of the Daudi Bohras, irrespective of their persuasion.

19. In Schedule X Hakimia School building is mentioned as item 5; the boarding-house is mentioned as item 6; Hakimia Dining Hall and Hakimia Laboratory are also mentioned as items 7 and 8.

20. Allegations of mismanagement, waste, misapplication of funds in the administration of the trust and the School are made in para 17 of the plaint.

21. In 1para 19 of the plaint, it is further alleged that the defendants had wrongfully assumed ad ministration of the trust and as such were trustees de son tort; that they have committed breaches of trust by the misapplication of the trust-funds as detailed in para 17 of the plaint

22. It is thus clear that there were definite allegations in the plaint that the defendants had misapplied the funds and committed various breaches of the trust. In that con text, a specific prayer was made for rendition of accounts.

23. The findings recorded by this Court in its judgment, run as under:

We find it established therefore that defendants 1 to 11 were not validly appointed trustees in respect of the trust properties mentioned in the plaint. Their possession and management of these properties must therefore be held to be only in the character of trustee de son tort They are liable therefore to account for their entire period of management

The learned Solicitor-General challenged the correctness of the findings of the courts below that these defendants (defendants 1 to 11) did not by their misapplication of trust funds to the extent of Rs. 15,596/5/8 and Rs. 900/- commit misappropriation and also that the admission of students who did not belong to the Daudi Bohra Community was not inconsistent with the object of the trust. We think it unnecessary however to consider these matters inasmuch as even if these findings of the courts below are correct the plaintiffs are entitled to the reliefs they have asked for in this suit. Besides the amount of Rs. 15000/- and odd has been already paid by defendants 2 to 11 under the decree of the trial Court. It is necessary to mention the fact that an assurance was given to by the learned Solicitor-General that in any case the interest of the non- Bohra students will be safeguarded in this School

Accordingly we allow the appeal and order that it be declared that the defendants 1 to 11 are not validly appointed trustees in respect of the trust properties

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mentioned in the List M annexed to the plaint: that the defendants be removed from the management of these properties and they be ordered to render an account of their administration of these properties. Necessary directions for the rendering of accounts will be made by the trial Court and in doing so, credit will be given to defendants 2 to 11 of Rs. 15,000/- and odd already paid by them.

The plaintiffs-appellants admit that it is not necessary to frame any scheme for the administration of the trust and we agree that this is not necessary-at least for the present. It is necessary however that new trustees be appointed for the administration of the trust.

24. The decree which was originally drawn up on the basis of the judgment of this Court ran as under:

That defendants 1 to 11 are not validly appointed trustees in respect of the trust properties mentioned in the list 'M' annexed to the plaint (and all the movable and immovable properties of the said school) and that the said Defendants be removed from the management of the said properties and the said Defendants be and are hereby directed to render an account of their administration of the said properties.

25. Subsequently, at the instance of the defendants, the words within brackets were deleted from the decree pursuant to an order of this Court, on the application of the judgment-debtOrs.

26. It is common ground that Hakimia School Building is mention ed in the List of trust properties under Item III as sub-item (ii) in the Schedule annexed to the plaint.

27. After a careful scrutiny of the pleadings and the judgment of this Court (the material parts of which have been extracted above) we are of opinion that the direction in this Court's decree requiring the defendants to render accounts of the administration of the trust properties mentioned in List M, includes a direction to render an account of the income and expenditure relating to the management and running of the Madrasai Hakimia and Coronation High School located in the Hakimia School Building. Incidentally, it may be noticed that in an appeal directed against an order, dated April 10, 1963, passed by the Additional District Judge, which was heard by another learned Judge (Bhargava J.), it was contended that the appointment of receivers for the management of the trust properties till the rendition of accounts by the defendants, was not necessary and the order in that respect should be set aside. In the alternative, it was contended that since the words "and all the move able and immovable properties of the said School" were deleted from the decree by this Court, there was no justification for the appointment of receivers of those properties. The learned Judge rejected these contentions and observed:

It is possible to say that the deletion may have been made to omk these properties from the operation of the decree or the deletion may have been

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because what was already said by the Supreme Court in its judgment was sufficient to include these properties and it was not necessary to repeat the direction again in the operation part of the decree.

It is a question which would be required to be finally decided in view of the final account whether these words could only mean the brick and mortar building which is standing on the site or the words would also cover the running institution which is housed in the building. On the whole I am prima facie inclined to accept these submissions made by Mr. Joshi (Counsel for the decree-holder). I do not think that the direction included in the operative part of the Supreme Court decree can be used for the purpose of nullifying what was said in the prior portion of the same judgment. However, I expressly refrain from pronouncing finally on this question at this stage.

28. In our opinion, the learned Judge was right in expressing that the direction in the decree in regard to the rendition of the accounts of the trust property viz., Hakimia School building would cover the administration of the School housed therein.' If the trust property 'Hakimia School Building' as mentioned at item 5 in the List 'M' were to be construed as only the brick and mortar building, it would rob the direction as to rendition of accounts of its content.

29. There is no indication in the order of this Court as to why the words "and all movable and immovable properties of the said School" were deleted from the decree. The only objection taken to the insertion of these words, in the application of the defendants was that in regard to these words, the decree had not been drafted in ac accordance with the judgment. In our opinion, the deletion of these words does not imply that the defendants were exempted from liability to ac count in respect of the administration of the School, altogether. The effect of this deletion, however, had to be assessed with reference to the award, dated July 20, 1942, and the decree dated 10-10-1942 of the High Court passed in the appeal arising out of earlier Suit, 5-A of 1936. As extracted above, the movable proper ties of the School including furniture, books, vstationery etc. as they existed on the date of the High Court's decree i. e. October 10, 1942 were not held to be trust properties. The direction as to rendition of ac counts contained in the decree will therefore not cover these movable properties as they existed on October 10, 1942.

30. We would therefore allow these appeals, set aside the judgment of the High Court and affirm the construction placed by the District Judge on the decree of this Court. For the sake of clarification we would further direct that for the words: "the said defendants are be and hereby directed to render an account of their administration of the said properties" occurring in the decree, the words "the said defendants be and hereby directed to render an account of the administration of the trust in relation to the trust properties mentioned in List 'M' including the administration of the School located in the property mentioned at Item 5 in List M annexed to the plaint" be substituted. It will be further added in the decree that while enforcing this direction of the Court with regard to

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rendition of accounts, the executing court shall exclude:

all movable properties consisting of school and Boarding house furniture, books, science apparatus, stationery articles and all sorts of goods chattels, vessels and sundry goods belonging to Madrasa-i-Haki-mia and Coronation High School.

as existing on October 10, 1942, from the trust properties in respect of which, the defendants are liable to account. Of course, this shall not absolve them from accounting for any subsequent expenditure incurred in respect of such movable properties while administering the school, after October 10, 1942. In the circumstances of the case, there will be no order as to costs.

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