(1916) 12 AHC CK 0037

In the Allahabad High Court

Narayan Das and Others APPELLANT

Vs

Khunni Lal and Another RESPONDENT

Date of Decision : 06-12-1916

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

Citation : AIR 1917 All 319 : 37 Ind. Cas. 897

Hon'ble Judges : Henry Richards, C.J;P. C. Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit purporting to have been brought by the plaintiffs u/s 92 of the Code of Civil Procedure. The facts are that in the year 1886 Beni Ram and Tulsi Ram made a gift of certain property in Bareilly for charitable and religious purposes. The manager (sarbarakar) was directed to lay out a grove, construct a temple and a well on the land with the income of the gifted property, or with his own funds, for public benefit and worship. It seems that the sarbarakar did not carry out his trust, on the contrary the temple was not built the grove was not planted and the land (the subject-matter of the gift) was mortgaged and alienated. The result was that one Chote Lal and others obtained the sanction of the Legal Remembrancer and brought a suit u/s 539 of the CPC of 1832, asking that the Manager, Bate Krishen, should be dismissed and praying for the appointment of a trustee in his place. A number of persons were made defendants to this suit as persons who had taken mortgages or become transferees of parts of the trust property. Amongst other defendants was Raja Lilta Prasad. This suit ended in a compromise decree which will be found at page 24 of the respondents'' book. Bate Krishen was removed from the trusteeship, Khunni Lal was appointed trustee in his place, certain of the alienations and transfers that had been made were declared to be invalid, and the Raja was allowed to retain portions of the property in his possession on which he had built; the compromise went on to provide that Khunni Lal should obtain possession and commence constructing a dharamsala on the land decreed. It appears that

Khunni Lal''s father had made a Will leaving a sum of RS, 40,000 to be disposed of for charitable purposes. It was intended that the dharamsala should be built and endowed out of part of this money. This settlement was undoubtedly a bona fide settlement, the public were represented by the plaintiffs in the suit. The new trustee was well provided with funds from his father''s Will and the building of the dharamsala, (assuming that the sanction of the Municipal Board to its erection could be obtained,) would be of public benefit. The Court accepted the compromise and made a decree. It would rather appear that the new trustee''s difficulties and troubles then began in real earnest. Opposition of various kinds was given to his efforts to obtain the permission to construct the dharamsala. At length, however, all there difficulties were overcome and the foundations of the dharamsala laid. Then the present suit was instituted and the complaint is that he did not build a temple, and that he is building the dharamsala on part of the land.

2. We have no doubt that it is his intention to build the temple. Photographs are in Court which show the temple in the course of construction, and the building of the dharamsala is one of the acts complained of. We are perfectly satisfied that the defendant Khunni Lal has not committed any breach of his duties as trustee, as laid down in the order of the Court in 1909 passed on the compromise. The present suit is in reality based upon the contention that inasmuch as in the original gift by Beni Ram and Tulsi Ram it was provided that the land should be used for the purpose of a temple, a grove and well, the building of the dharamsala is a departure. It may be conceded here that if the question bona fide arose as to whether or not there should be a departure from the original terms of the gift of Beni Ram and Tulsi Ram, the Court on being asked to settle a scheme would not depart from the original intentions of the donors. But the case does not come before us in that way. Section 92 provides that any two or more persons having an interest in the trust and having obtained in writing the consent of the Legal Remembrancer, may institute a suit for any of the purposes mentioned in the Section. These purposes are the removing of a trustee, appointing a new trustee, vesting any property in a trustee, directing accounts and inquiries, declaring what proportion of the trust property or of the interest therein should be allocated to any object of the trust, authorising the whole or any part of the trust property to be let, sold, mortgaged, or exchanged, and settling a schema. It seems to us that the only possible relief which the plaintiffs would be entitled to in the present case would be the removal of Khunni Lal from the trusteeship and the appointment of a new trustee in his place on the ground that he had committed a breach of trust. We may point out that if Khunni Lal owes his appointment to the order of the Court in the previous suit, he has committed no breach. We have no doubt that he intends to build the temple and the dharamsala, and as far as possible the grove also will be planted. The plaintiffs themselves in the plaint set forth that Khunni Lal was appointed under the order of the Court. To go back for a moment to the general merits of the case the only interest in the trust which the present plaintiffs have is as members of

the public. In vain have we asked a suggestion of how the public have in any way been damnified by the building of the dharamsala. It is quite clear that so far from being damnified the public will largely gain. In the written statement it is clearly and distinctly stated that the real person behind this litigation is Raja Lalta Prasad. If this be the fact, we think that the bringing of a suit, u/s 92, for the private purposes of some individual or individuals is really an abuse of the process of the Court. That Section is intended to enable suits to be brought for the benefit of the persons interested in the trust. It is not intended to enable persons to gain private ends by putting forward nominees probably men of straw to institute suits which will put their adversaries or the trust funds to wholly unnecessary and improper costs. We are a little surprised that the sanction of the Legal Remembrancer was given to the institution of the present suit. We think that when an application is made to the Legal Remembrancer for permission to bring a suit u/s 92, the applicants ought with the utmost good faith to set forth and specify in their petition the reason for and object of the intended suit and we think that before granting permission the Legal Remembrancer should satisfy, himself that the proposed suit is at least prima facie bona fide and that the applicants are "interested in the trust." Under somewhat similar circumstances Lord Ellon said in the case of Ex parte Skinner, In the matter of Lawford Charity (1817) 2 Mer. 453 : 35 E. R. 103. "I desire to have it understood that no petition under the Act ought to receive that sanction (i.e., of the Attorney-General) except by the same deliberation that it would be thought tit to afford to the case if it were presented in the shape of an information." We imagine that if it had been brought to the notice of the Legal Remembrancer that in 1909 a suit brought in respect of this very charity had been compromised and that Khunni Lal had been acting in accordance with the order of the Court passed in that suit; and if his attention had been further sailed to the fact that the real object of the suit was to prevent a dharamsala being built on the land in accordance with the express terms of the compromise, he would never have given permission to the institution of the present suit. In our opinion it is sufficient, in affirming the decision of the Court below, to say that we do not believe that this is a bona fide suit brought for the purpose of obtaining any of the reliefs mentioned in Section 92 of the Code of Civil Procedure.

3. We believe that the suit has been brought not for any public purpose but for some private ends. We dismiss the appeal with costs including in this Court fees on the higher scale.

