

(2014) 11 UK CK 0024
In the Uttarakhand High Court
Case No : C.R. No. 81 of 2014

Naveen Porwal and Others

APPELLANT

Vs

Akhilesh Kumar Singhal and Others

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 92
Criminal Procedure Code, 1973 (CrPC) — Section 107, 116

Citation : (2015) 108 ALR 632

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : Arvind Vashistha and Monika Pant, Advocates for the Appellant;
Piyush Garg, Advocates for the Respondent

Judgement

Servesh Kumar Gupta, J.—This Court has rendered hearing at length to learned Counsel of both sides viz. the defendants/revisionists as well as plaintiffs/respondents. The judgment and order dated 2.6.2014 passed by the District Judge, Dehradun in regular miscellaneous application 47/2014 has been questioned by way of filing the instant revision, wherein the learned Court below has allowed the application for leave to file the suit under section 92 read with section 151 CPC rejecting the objections of the defendants/revisionists there against.

2. As of now, Kailashanand Mission Trust is in the hands of the defendants/revisionists, who are managing the innumerable affairs of the said trust after the death of Swami Kailashanand, its founder president and trustee, who breathed his last as nonagenarian.

3. Learned Sr. Counsel of the defendants/revisionists has strived to show that since the plaintiffs No. 1 and 2 are the tenants of the shops in the premises of the trust at Laxman Jhoola, where one of the most prominent buildings and offices of the trust is settled, so, after the death of Swami they began to create the nuisance for the defendants/revisionists in their working and managing the

affairs of such trust. That interference went to the extent of registering the cross cases under sections; 107 and 116, Cr.P.C. in the competent Court having the jurisdiction of the place.

4. On the other hand, learned Counsel of the plaintiffs has highlighted a number of aspects including that Mr. Naveen Porwal, revisionist No. 1, was working in the office as Clerk during the lifetime of Swami; Daya Ram Rayal was the driver of Swami; Krishan Avtar Gupta was the Assistant to look after the Court matters of the trust; Anil Kumar Gupta, defendant No. 4, was the caretaker of the temple situated in the campus and Rangi Lal Sharma was the Purohit of the institution. Although Rangi Lal Sharma was once the trustee, but later on he was removed by Swami himself. So, after the death of Swami, these all persons, in order to achieve their nefarious design, have collectively taken over the trust or rather grabbed it because this trust has huge immovable and movable property. It has various accounts in a number of banks situated at Rishikesh as well as outside. The rooms including the luxurious ones are being utilized as hotel rooms for the monetary benefit of their own by the defendants.

5. In the background, as has been stated above, the Court at the same time cannot also be oblivious of the fact that defendants No. 7 to 16, though most of them are near relatives of deceased Swami, but reside in New York, U.S.A. and rest of them are residing in remote districts of Uttar Pradesh barring few one, so, the prayer as has been entailed in the plaint that the Government of the trust be handed over to defendants No. 7 to 16, may not be viable and feasible solution to run the trust affairs effectively and to attain its benevolent and charitable purposes, wherefore it was founded by its Swami.

6. Learned Sr. Counsel of the defendants/revisionists has relied upon a precedent of Hon'ble Apex Court rendered in Vidyodaya Trust Vs. Mohan Prasad R. and Others, , wherein it was laid down that the permission of section 92 CPC should not have been given to vindicate the personal rights, but the Court feels that this precedent is not applicable in the present controversy for the reason that it is not the sole prayer of the plaintiffs that the management and affairs of the trust should be handed over in the hands of the defendants No. 7 to 16, but alternatively it has also been prayed that since the trust properties are being misused and abused grossly to meet out the personal needs of the defendants/revisionists, hence, the Court should formulate a scheme of administration so that the purpose of this charitable trust may be achieved in its true spirit.

7. At this stage, the Court does not want to enter meticulously on each and every aspect and part of the evidence which is available on the record and may be led later by the parties, but feels that the Court below has done nothing wrong in granting the permission to launch the suit under section 92 CPC. Even more, this Court, in order to save the immovable and movable properties of the trust, feels its bounden duty to pass ad interim order as under:

(i) Any of the defendants/revisionists will not transfer any immovable property of

the trust or part thereof or create third party encumbrance on any part of it during the pendency of the suit.

(ii) They will not withdraw any fund/cash or encash the TDR whatsoever of the trust just after passing this immediate order which is under hearing of their learned Counsel.

(iii) They will keep maintaining the accounts very scrupulously, each and every income and expenditure of the trust and to present it before the Court every month during the pendency of the suit for its monitoring.

(iv) They will not make any major expenditure out of the funds of the trust without the prior permission of Court below except the one which is extremely necessary to manage the day-to-day affairs of the trust.

Revision is bereft of any merit and it is hereby dismissed.