

(2008) 07 DEL CK 0008
In the Delhi High Court
Case No : C.S. (OS) 1583 of 2005

Sharda Bansal and Others

APPELLANT

Vs

R.D. Bansal and Others

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2008) 105 DRJ 282

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : S.N. Kumar and S.K. Gupta, for the Appellant; A.K. Sharma, for Defendant Nos. 1 to 4, Harish Malhotra Gaurang Kanth, Rahul Kumar and Savita Singh for Defendant No. 5, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—In this suit, the defendant No. 5 (Gulab Devi Charitable Trust) is admittedly a public charitable trust. Issues were framed in the suit on 5th October, 2007 and the issue No. 5 as under was ordered to be treated as a preliminary issue:

Whether the suit is not maintainable against defendant No. 5 in view of Section 92 of the CPC as alleged by the defendant No. 5?OPD5

2. Arguments have been heard from the counsel for the defendant No. 5 and the counsel for the plaintiffs. The suit is with respect to the estate of Shri Manmohan Bansal who died on 24th May, 1996. The plaintiff No. 1 is the widow and the plaintiff Nos. 2 to 4 are the son and daughters of Shri Manmohan Bansal. It is the case in the plaint that the defendant Nos. 1 to 4 who are the brother and legal representatives of the brother of Shri Manmohan Bansal have fabricated a Will dated 17th May, 1996 of Shri Manmohan Bansal whereunder the proceeds of the estate are to go to the defendant No. 5 trust. The plaintiffs have for the said reason impleaded the defendant No. 5 trust as a party to the present suit and

have further pleaded that separate proceedings for looking into the affairs of the defendant No. 5 trust are being taken u/s 92 of the CPC. The plaintiffs in the present suit have sought a declaration that the Will dated 17th May, 1996 of Shri Manmohan Bansal is a forged and fabricated document and a decree for recovery of Rs 48,70,000/- from the defendants jointly and severally and sought accounts of the estate of Shri Manmohan Bansal and permanent injunction for restraining the defendants from dealing with the estate of Shri Manmohan Bansal. The defendant Nos. 1 to 4 and the defendant No. 5 have filed separate written statements. The defendant No. 5 in its written statement, inter alia, took up the plea on which the preliminary issue aforesaid was framed. The plaintiffs in their replication denied that Section 92 of the CPC has any application to the reliefs claimed in the suit.

3. The senior counsel for defendant No. 5 besides reiterating the plea and drawing attention to the relief in the plaint of accounts including against defendant No. 5 Trust has relied upon the judgment dated 3rd July, 2008 of this Court in Anil Nanda and Anr. v. Escorts Limited and Ors. (CS(OS) 1372/2005). Per contra, the senior counsel for the plaintiffs has relied upon Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another,

4. The aim of Section 92 of the CPC is to protect the rights of public in charitable trust and to enable the public, the Advocate General and the courts of justice to stop the misuse of the income of charitable institutions. The Section is intended to provide proceedings of a special nature for the purpose of determining questions that relate to the administration of public, religious or charitable trusts and to prevent multifarious and vexatious suits being filed by irresponsible persons against the trustees whose duty it is to administer such trusts. Section 92 gives protection to a public trust from being subjected to harassment by suits being filed against them. However, the infringement of private rights is outside the scope of Section 92. The real test for applicability of the Section is to see whether the suit is fundamentally on behalf of public for vindication of a public right. A suit within the meaning of Section 92 necessarily has to have the administration of the trust as its core purpose/object. The Apex Court in Harendra Nath Bhattacharya and Ors. v Kaliram Das (Dead) by his LRs and Ors. AIR 1972 SC 246 has held that in order that the Section may apply the following conditions must be satisfied: (a) there must be" in existence trust for public purpose of a charitable or religious nature; (b) the plaintiff must allege that there is a breach of such trust or that the direction of the court is necessary for administration of the trust; (c) the suit must be a representative one on behalf of the public and not by individuals for their own interest; (d) the relief claimed in the suit must be one of the relief mentioned in the Section. Where all the aforesaid conditions are satisfied, the Section 92 becomes applicable and where any of the conditions are absent, the Section has no application.

5. Reliance can also be placed upon another judgment of the Apex Court Bishwanath and Anr v Shri Thakur Radhaballabhji and Ors (AIR 1967 SC 1044

where a suit for possession of property in enforcement of a private right was held not to attract the provisions of Section 92 of the CPC. Merely because a suit relates to public trust or to the properties belonging thereto, without the other conditions of the Section being satisfied will not make the Section applicable thereto.

6. Applying the aforesaid law, merely because one of the prayers in the suit is of rendition of accounts with respect to estate of Shri Manmohan Bansal and which estate as per the will challenged by the plaintiffs vests in the defendant No. 5 trust, it cannot be said that Section 92 CPC is attracted. The plaintiffs have sued for enforcement of their individual rights and not in a representative capacity. The aim of the present suit is not administration of defendant No. 5 Trust but only to recover what the plaintiffs claim and which may have been transferred to the defendant No. 5 Trust. In the absence of Will of Shri Manmohan Bansal and which is under challenge in this suit, the estate of Shri Manmohan Bansal could not have vested in defendant No. 5 Trust and the plaintiffs upon being found successful would be entitled to recover the part of estate, if any, in possession of defendant No. 5 Trust. Such a suit does not fall within the ambit of Section 92 as held by the Apex Court in *Swami Paramatmanand Saraswati and Anr. (supra)*. In *Anil Nanda (supra)*, this Court in para 17 of the Judgment held that the plaint in that case contained allegations of breach of trust and the plaint in that case sought the relief of re-establishing the public charitable nature of Escorts Heart Institute and Research Centre Delhi and thus held the suit to be barred for non-compliance of Section 92 CPC. However, the plaint in the present case, has no averment of breach of trust in relation to Defendant No. 5 Trust and as aforesaid, Defendant No. 5 has been impleaded only because properties which the plaintiffs claim may have passed on to the defendant No. 5.

The preliminary issue No. 5 is accordingly decided in favour of the plaintiffs and against the defendant No. 5 and the suit as framed, is held to be maintainable against the defendant No. 5.