
(1960) 11 AHC CK 0026
In the Allahabad High Court
Case No : Second Appeal No. 1105 of 1952

State of U.P. Government

APPELLANT

Vs

Sham Sundar Ram Charan

RESPONDENT

Date of Decision : 02-11-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 100, 35
Transfer of Property Act, 1882 — Section 122
Trusts Act, 1882 — Section 94

Citation : AIR 1961 All 418

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : K.C. Saxena, for the Respondent

Final Decision : Allowed

Judgement

S.S. Dhavan, J.—This is an appeal by the Government of the State of Uttar Pradesh against the decree of the learned Civil Judge Farrukhabad directing the Government to refund a sum of Rs. 500/-which was donated by the plaintiff respondent M/s Sham Sunder Lal Ram Charan in the year 1945. The facts are these : In March 1945 several meetings Were held in Farrukhabad under the authority of the District Magistrate at which an appeal was made to the public to subscribe to a fund for the erection of a women"s hospital at Chhibramau.

The plaintiff firm contributed a sum of Rs. 500/-towards this fund and paid the amount in cash on 1st June, 1945. It was alleged by the firm that subsequently they came to know that the scheme for the construction of the hospital had been abandoned. Thereupon it wrote to the Government asking for the refund of their money which had been donated according to them on the express understanding that it would be utilised for the purpose of erecting a a hospital. On 6th April, 1946, the District Magistrate sent a reply that the plaintiffs subscription was voluntary, that the amount paid by him had been credited to "His Excellency"s War Purposes Fund" and that "as the account had been closed, Government was

not prepared to make any refund."

This did not satisfy the plaintiff firm and on 18-11-1946 it served a notice u/s 80 C. P. C. calling upon the Government to refund the amount. On 29-7-1947 another letter was sent by the plaintiff firm to the Collector inquiring if any steps had been taken for the implementation of the scheme for the construction of the hospital. No reply appears to have been sent to this letter and on 17-3-1948 the firm filed their suit for the recovery of the amount donated by it.

It was stated in the plaint that the money had been donated on a clear understanding that it would be utilised and spent for the erection of a women's hospital and that the Government was a trustee of the money. The plaintiff claimed that as the Government had abandoned the scheme for building a hospital the object of the trust had failed and the plaintiff was entitled to a refund of his money which was lying unused with the defendant.

2. The Government of Uttar Pradesh contested the suit and resisted the firm's claim to a refund. It was, however, admitted that in 1945 the Collector of Farrukhabad had held a meeting in which certain sums of money were donated by the public for the purpose of establishing a female dispensary at Chhibramau. The receipt of a donation from the plaintiff firm was admitted and also that District Magistrate wrote to the plaintiff that its money had been diverted to the War Purposes Fund. It was, however, pleaded that, due to constitutional and political changes, the establishment of the dispensary had been delayed but the idea had never been dropped.

It was further stated by a resolution of the Committee (presumably the Advisory Committee of the district) dated 9th April 1948, it was decided that a sum of Rs. 5000/- be added to the amount received by the public and the entire fund should be utilized for constructing a women's ward to be attached to the existing District Board Hospital at Chhibramau. This resolution was sent to the Govt. for approval on 5th May 1948. The written statement did not reveal whether the Government had given its approval, but it was categorically denied that the scheme for the construction of a female dispensary at Chhibramau had been abandoned.

3. The trial court held that the donation was paid to the Government on trust for a specific purpose and that the scheme for erecting a hospital had been abandoned. It further held that the purpose of the trust having failed the plaintiff was entitled to a refund of Rs. 500/- donated by him. In appeal the learned Civil Judge upheld the findings and the decree of the trial court. The State has now come to this court in Second Appeal.

4. At the commencement of the hearing of the appeal, Mr. A. C. Mukerji learned counsel for the State stated on behalf of the Government that

"an estimate has been already prepared for the construction of a female ward which will be attached" to the existing dispensary at Chhibramau and that the

plan is under preparation for the construction of this ward."

It was also stated by Mr. K. C. Saxena on behalf of the plaintiff-respondent that

"the sole motive of the plaintiff in filing this suit was to prevent the Government from going back on their undertaking to the donors that the money donated by them would be spent in erecting a female hospital at Chhibramau and that he was compelled to file this suit when he received a letter from the District Magistrate, Farrukhabad, dated 6-4-46 that the plaintiffs contribution was voluntary and had been diverted to His Excellency's War Purposes Fund."

This statement as well as that made on behalf of the State were recorded by the Court.

5. I have heard learned counsel for both sides. Counsel for the State contended in the beginning that the amount donated by the firm was an outright gift and it is not entitled to claim a refund even if the purpose for which it was given had failed. This contention cannot be considered seriously as the whole weight of authorities, English and Indian, is against it. If this argument prevails, the gates will be opened wide for all kinds of adventurers and make it easy for them to swindle the public by obtaining donations for charitable schemes which they need not refund even if the scheme is given up. I think the Government is under the same obligations as a private citizen when soliciting and obtaining donations for a public purpose.

6. State counsel then contended that the courts below have erroneously held that the purpose of the trust had failed. It appears from the record that in 1948 some kind of a resolution was passed in favour of a scheme for the construction of a female ward to be attached to the District Board Dispensary at Chhibramau. This resolution was sent to the Government and appears to be still under consideration. State Counsel's statement on behalf of the Government which was recorded by the Court indicates that the scheme for the construction of a female ward is being considered and a plan for the construction of a building is already in preparation.

7. I have carefully scrutinized the judgments of the courts below and I am of the opinion that their finding that the scheme for the construction of a hospital has been abandoned is not correct. The authorities did not give up the scheme but decided to construct a female ward attached to the existing dispensary instead of constructing a separate women's hospital. Neither of the courts below considered the question whether this change in the original scheme amounts to its total abandonment.

The trial court did observe that even the scheme for the construction of a women's ward appeared to have been abandoned, but this finding cannot stand as it is based on no evidence -- a fact which was conceded by the learned counsel for the plaintiff-respondent. This court has held in several cases that a finding of fact based on no evidence is not! binding on this High Court in second

appeal and can be set aside.

8. I have, therefore, to consider whether the scheme of the authorities, which is still under consideration, to construct a women's ward attached to the existing general hospital is a substantial compliance with the original purpose for which the donations were subscribed. Mr. Saxena contended that the addition of a ward is not the same thing as building a hospital and therefore, the Government must be deemed to have abandoned the original scheme. I do not agree with this argument as stated in such wide terms. The subscriptions were obtained for the purpose of building a women's hospital at Chhibramau.

A hospital has been defined in the New English Dictionary as "an institution or establishment for the care of the sick or wounded or of those who require medical treatment." In certain circumstances a ward attached to a hospital may be for all purposes a hospital in itself. Webster's Dictionary defines the word "ward", in its application to hospital, as "a room or a division of a hospital". It is possible for a hospital to have separate wards or divisions which are more or less autonomous. To take an example.

I can take judicial notice of this fact -- the Kamla Nehru Memorial Maternity Hospital at Allahabad which has several divisions including a cancer ward which for all purposes is a separate hospital though under the control of the same committee of trustees as the maternity section. It cannot be said that the scheme for constructing a female's hospital must be deemed to have been given up because it has been decided to add a female ward to the existing general hospital. The ward when in use will serve all the purposes of a hospital even though it will be under the same administration as the general hospital. A common administration may be of advantage to the public as it will reduce administrative expenses and thus release more money for medical facilities available for women.

9. It seems to me that the plaintiff's suit is somewhat premature at this stage. He should wait till the proposed female ward has been constructed. If he then finds that the ward is really no ward at all and Government have made a show of implementing their undertaking, or if after waiting for a reasonable time, he again finds that the scheme has been abandoned, he will be at liberty to take legal action for the refund of his money. It was suggested that this Court should fix a time limit for the Government to honour their undertaking. I do not think this Court can impose any time limit, beyond saying that the purpose of the donation should be implemented within a reasonable time.

10. For reasons detailed in the foregoing paragraphs, I allow this appeal and dismiss the plaintiffs suit as premature.

11. Mr. Saxena has contended that his client is entitled to costs in the special circumstances of this case. I have given this matter some consideration and I have heard learned counsel for the State. I think Government's attitude to the plaintiff's grievance has been far from candid and the Court's sympathy is with

the plaintiff-firm though it has dismissed its suit as premature. Subscriptions were raised nearly fifteen years ago for the purpose of constructing a female hospital which has not been erected yet.

When the firm wrote to the Government reminding them of their obligation he received a cynical reply that the money given, by him had been diverted to the War Purposes Fund. If a citizen repudiates his obligations in this cynical fashion, he will probably be prosecuted for cheating and if he is a Government servant he would probably be charged with conduct unbecoming of a Government Officer. But what is dishonest for citizens and unbecoming for officials cannot be honest or becoming for the Government itself.

There cannot be two different standards of morality and obligations of honour for the citizens and their Government (which represents them). In 1945 when the firm reminded the Government that they had done nothing to implement their undertaking to construct a hospital for which it had donated money they gave it no assurance that the scheme had not been abandoned. The District Magistrate Farrukhabad coolly replied that the plaintiffs subscription was voluntary and had been credited to the Governor's War Purposes Fund and that he was not entitled to any refund.

It is not sup-rising that in the political atmosphere of 1945 the plaintiff-firm thought that the Government of the day had played what the common man would call a dirty trick on the public in obtaining money on the pretext of building a hospital but diverting it to war purposes which did not have the support of the majority of the people at the time. The suit was filed in March 1948 two years after the receipt of the District Magistrate's letter of April 1948 when it became clear that the change of Government had produced no change in attitude in this matter.

Government appear to have realised their mistake only after they were dragged into the law courts, and even before this court, it was claimed that the donation was an outright gift to Government. From the statement of counsel recorded today it appears that the firm's motive in filing the suit was to compel the Government to honour their word, and it was compelled in the public interest to go to the Court, because the conduct of the Government left no other alternative for it. In these circumstances, I think it is a fit case for awarding some costs to the plaintiff though its suit is being dismissed as premature. I direct that the decree for costs in favour of the plaintiff in both the courts below shall stand, and the costs of this appeal will be borne by the parties.