
(1973) 04 CAL CK 0022
In the Calcutta High Court
Case No : Suit No. 360 of 1972

Sukhlal Chandanmull Karnani Trust and Another APPELLANT
Vs
Shew Kumar Karnani and Others RESPONDENT

Date of Decision : 26-04-1973

Acts Referred:

Charitable and Religious Trusts Act, 1920 — Section 7

Citation : AIR 1973 Cal 444

Hon'ble Judges : A.K. Sarkar, J

Bench : Single Bench

Judgement

A.K. Sarkar, J.—This application is made under Charitable and Religious Trusts Act XIV of 1920 in the matter of Rai Bahadur Sukhlal Chandanmull Karnani Trust having office at No. 3, Synagogue Street in Calcutta within the aforesaid jurisdiction of this Court. The settlor, Indra Kumar Karnani who was also the managing Trustee, died on or about July 8, 1966 without appointing by Will or Deed any trustee in his place and on his death there remained only two trustees surviving viz., the petitioner, Chhaganlal Kothari and the respondent No. 3, Ratanlal Periwal. The Indenture of Trust dated June 29, 1946 provided inter alia that, there shall not be more than five trustees nor there shall be less than three trustees and for appointment of new trustee according to the rules mentioned in Schedule IV to the said Indenture in case of a vacancy, except in case of the said Indra Kumar Karnani.

2. On the death of the said Indra Kumar Karnani, who did not appoint any trustee by Will or Deed in his place, the surviving trustees though under the rules contained in Schedule IV to the said Indenture were empowered to choose and appoint trustee in place of the said Indra Kumar Karnani deceased, any member of the settlor's family in the male line and though the respondent No. 1, Shew Kumar Karnani and No. 2, Jai Kumar Karnani, the brother and the eldest son respectively of the said Indra Kumar Karnani and both members of the settlor's family in the male line expressed their desire in writing to be appointed as such

trustee or trustees, could not agree upon as to who should be appointed as new trustee and if appointed whether the same would be valid. In the result no appointment was made, inconveniences and various difficulties were gradually being felt in the management and administration of the said Trust Estate.

3. One of the two surviving trustees viz., Chhaganlal Kothari in September, 1972 made this application for inter alia certain opinion and/or advice and/or directions for appointment of a new trustee or trustees for proper management and administration of the Trust Estate.

4. Mr. Somnath Chatterjee appearing for the petitioner made this application.

5. Mr. Anindya Mitter appearing for the respondent No. 1, Shew Kumar Karnani supported the application and Mr. Tapas Kumar Roy appearing for the respondent No. 2, Jai Kumar Karnani also supported the application.

6. Mrs. Manjula Bose appearing with Miss Manju Rai Choudhury for the respondent No. 3, Ratanlal Periwal opposed the application.

7. Mrs. Manjula Bose, the learned counsel opposing this application urged the following points:--

(1) The application is made under the provisions of Section 7 of the Charitable and Religious Trusts Act (Act XIV of 1920) which provides for (a) an application by a trustee, (b) by a petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, (c) for opinion, advice or direction of the Court, (d) on any question affecting the management or administration of the trust property.

8. Mrs. Bose contended that since the death of Indra Kumar Karnani on 8th July, 1966 nothing happened, the trusts have not been carried out as it came to an end. She further contended that in this application u/s 7 of the Charitable and Religious Trusts Act, 1920 the Court cannot decide that there exists a Trust which requires directions and/or advice for management or administration.

9. The Trust was made for a period of twenty years from 1st July, 1946 at the first instance for certain Charitable and Religious purposes for the benefit of the Hindu Public to perpetuate the memory of the settlor's late illustrious grandfather, Rai Bahadur Seth Sukhlal Karnani and his late father, Rai Saheb Chandanmull Karnani. The use of the words "at the first instance" at several places in the said Indenture in my view, implied the intention of the settlor that the trust will be extended beyond the said period of twenty years by the karta or manager of the said joint family for the time being by a fresh deed. In the instant case the settlor, Indra Kumar Karnani himself was the first Managing Trustee and the Karta and manager of the said joint family. He suffered serious ailments and died on 8th July, 1966. He could neither nominate nor appoint a trustee in his place by a Will or Deed nor extend the period of trust which expired on 1st July, 1966 beyond 20 years by a fresh Deed before his death on 1st July, 1966.

10. The Trust could be extended either during the period of twenty years or on its expiry. The case of the respondent No. 2, Jai Kumar Karnani is that he is the eldest son of the settlor and his father, late Indra Kumar Karnani at his death bed expressed his desire in the presence of his family members including his brother, Suraj Kumar Karnani that the respondent No. 2 being his eldest son should be appointed a Trustee and the Managing Trustee of the said Trust. This is borne out by a letter written by the settlor's said brother Suraj Kumar Karnani dated September 8, 1966 to the said surviving trustees and to the Trust Estate, a copy whereof has been annexed to the affidavit of the said Jai Kumar Karnani affirmed by him on 3rd January, 1972. Due to his continuous ailments before death and for other reasons the appointment of respondent No. 2 as Trustee in his place by a Deed or Will could not be ultimately made and by reason of his death the extension of the Trust beyond 20 years from 1st July, 1946 by a fresh Deed could not be made but expression of his said desire at least shows that Indra Kumar Karnani, the Karta or the Manager of the joint family intended the Trust to be further extended beyond the period of 20 years.

11. Besides, the answer to the question whether the Trust exists after expiry of the period of 20 years from 1st July, 1946 in the absence of its extension by the Karta or Manager of the joint family for the time being by a separate deed is to be sought in the Deed of Trust itself.

12. From the plain reading of the said Deed of Trust it appears that on the expiry of the period of 20 years if the Trust is not extended or made absolute and permanent by the Karta or the Manager for the time being of the said joint family by a separate and fresh Deed, the Trustees for the time being will convey the lands and premises set out and described more fully in Schedule I to the said Deed referred to as "Trust Estate" which was conveyed absolutely to the Karta or the Manager of the aforesaid joint family. Therefore the only property which was intended to be transferred by the Trustees for the time being to the Karta or the Manager of the joint family for the time being on the expiry of 20 years from 1st July, 1946 was the house and premises known as "Karnani Estate" at No. 209, Lower Circular Road, Calcutta described in the Schedule I to the said Deed. The properties that may be acquired or the institutions that may be founded by the Trustees during the continuance of the Trust will remain Trust properties and will be administered as the Trustees may decide. Therefore from the plain reading of the Trust Deed it appears to me that the Trust with regard to the accretions and accumulations continued even after expiry of the period of 20 years and the Trustees were directed to administer them as they may decide.

13. There is no dispute between the parties and as a matter of fact the respondents 1 and 2 being members of the settlor's family in the male line supported the application, the respondent No. 3, a stranger to the settlor's family merely put forward the question whether the Trust exists or not to avoid future complications. In any event it is however not a question of such nature that requires to be decided in a suit upon oral testimony. The Trust Deed in my

view should be read as a whole to ascertain the real intention expressed and/or implied in the document. Mrs. Bose referred to a decision in *Rameshwar Das Birla v. Advocate General of West Bengal*, reported in (1957) 99 Cal LJ 161 in order to show that in an application u/s 7 of the Charitable and Religious Trusts Act the Court shall not be bound to give such opinion, advice or direction on any question which the Court considers to be a question not proper for summary disposal.

14. In my view there is no question nor any dispute raised which requires adjudication by a suit on evidence. From the plain reading of the Deed of Trust as a whole the questions raised in this application can be disposed of on the affidavits filed before me. The Court can also appoint new Trustees because a direction in that behalf is deemed necessary for the administration of the Trust. Further the Deed itself provides for the management of properties acquired during the period of 20 years by the Trustees as the Trustees may decide. This shows the intention to extend the trust beyond 20 years irrespective of its extension by a separate or fresh deed.

15. Mrs. Bose, the learned Counsel for respondent No. 3 cited the decision In the Goods of Akshoy Kumar Ghose, deceased reported in AIR 1949 Cal 462. In that case it was *inter alia* held:

"Section 302 of the Indian Succession Act, 1925 should not be read in such a way as to make the section in the statute a substitute for a suit in any and every case relating to the estate or its administration. The Legislature used the word "directions" which should receive a construction consonant to the ordinary meaning of the word. The word "directions" does not mean adjudication and determination of substantive rights but they mean directions to help the executors in the difficulties in respect of practical management or administration where no disputed question of title or difficult question of construction of Will or complicated questions of law are involved."

16. In the instant application the question whether the Trust exists after expiry of twenty years from 1st July, 1946 in my view is not a difficult question of construction of the Deed of Trust and can be dissolved by plain reading of the whole Deed. No complicated questions of law are involved in the instant application and directions to help the surviving trustees in the difficulties in respect of management and administration of the Trust by appointing new trustee or trustees may be given. I do not find any reason why for the dissolution of the question in the instant case a suit must have to be filed.

17. Mrs. Bose then cited another case reported in *Avoch Thevar Vs. Chummar*, which *inter alia* held that,

"The limitation is that the Court will refuse to consider the matter if in its opinion the question is one not capable of summary disposal e. g., if it is one of detail or difficulty. In any event, the Court will consider judicially the matters placed before it before disposing of the matter."

18. I have considered the matters placed before me and the questions including the question whether the trust in the instant case exists after expiry of twenty years from 1st July, 1946 and in my view they are not such questions not capable of summary disposal.

19. Further by the Deed of Trust it is declared

"if the Karta or the manager of the joint family for the time being does not extend the period of Trust beyond the said twenty years or make the Trust absolute and permanent by a separate and fresh deed, the "Trustees" (meaning therefore that the "Trustees" will continue even after expiry of twenty years from 1st July, 1946) for the time being will convey the message land hereditaments and premises set out and described more fully in Schedule I hereunto referred to as "Trust Estate" and hereby conveyed absolutely to the Karta and Manager of the aforesaid joint family for the time being immediately on the expiry of 20 (twenty) years from 1st July, 1946"

and it further declared that the properties that may be acquired or the institutions that may be founded by the "Trustees" during the continuance of the Trust will remain trust properties and will be administered as the Trustees (i. e., the Trustees will continue after expiry of the said 20 years) may decide.

20. There are various properties acquired and institutions founded during the continuance of the said Trust and the Trust exists and continues in respect of the said acquisitions. Nothing in my view, can be more clear from the plain reading of the said Deed of Trust that, the Trust still exists even after the expiry of twenty years from 1st July, 1946 and the question is therefore disposed of.

21. The next point of Mrs. Bose, the learned counsel for the respondent No. 3 is that an application u/s 7 of the Charitable and Religious Trusts Act must be made by a trustee. This application has been made by one of the said two surviving trustees, viz., Chhaganlal Kothari inasmuch as the trust exists.

22. The next point taken by Mrs. Bose, the learned counsel for respondent No. 3 is that this Court has no jurisdiction to give any opinion, advice or direction u/s 7 of the Charitable and Religious Trusts Act in the present application within the local limits of whose jurisdiction no substantial part of the subject-matter of the Trust is situate.

23. Mrs. Bose contended that there is no averment in the petition that substantial part of the subject-matter of the trust are situate within the jurisdiction of this Court. It must be shown what are the trust properties and what are their estimated value. Comparing the languages of Section 7 of the Charitable and Religious Trusts Act 1920 with those of Section 92 of the CPC in this respect it appears to me u/s 92 the words, "within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate" are rather wide. In Section 7 of the Charitable and Religious Trusts Act, 1920 the language is "within the local limits of whose jurisdiction any substantial part of

the subject-matter of the trust is situate."

24. Mr. Somnath Chatterjee, the learned counsel appearing for the petitioner contended that the averments in paragraph 14 of the petition regarding the claim in mortgage decree of this Court and of other securities in excess of Rs. 50,000 in value as part of the Trust estate show that substantial part of the subject-matter of Trust is situate within jurisdiction of this Court. He further submitted that the words "any substantial part of the subject-matter of the trust" do not mean major part. The word "substantial" cannot be equated with the word "major". In my view, Mr. Chatterjee in his above contention is correct, there are sufficient averments in paragraph 14 of the petition in terms of Section 7 of the Charitable and Religious Trusts Act to give jurisdiction to this Court. Further, the respondent No. 3 in paragraph 12 of his affidavit affirmed by him on 8th December, 1972 has been unable to deny the said averments in paragraph 14 of the petition and to give any particulars of the Trust properties.

25. Mr. Chatterjee contended that the question in this application is "Is there a subsisting Trust"? If the Court considers that such question can be disposed of summarily without taking oral testimony the same should be done without hesitation. To ascertain the real intention of the settlor from the Trust Deed, the same should be read as a whole and if there are two possible constructions, one making the Trust workable and the other unworkable, the Court should hold the Deed which gives workable construction. No two constructions possible.

26. Mr. Chatterjee drew my attention to page 629 of Lewin on Trust (16th Edition) and to the maxim "The Trust shall not fail for want of a Trustee." He cited a Full Bench decision reported in MAHARAJ BAHADUR RAM RAN VIJAY PRASAD SINGH Vs. THE PROVINCE OF BIHAR., . He further contended that Mrs. Bose has not however shown or urged how the questions in this application in respect of which opinion, advice or directions have been asked cannot be summarily dissolved.

27. Mr. Anindya Mitter, the learned counsel appearing for the respondent No. 1, Shew Kumar Karnani supported the application and urged that no member of the Karnani family who are interested in the trust which was made in respect of a joint family property has come forward to say that the Trust has come to an end. The members of Karnani family all want the Trust to continue so that the memory of their grandfather and father may be perpetuated. Mr. Mitter's client, the respondent No. 1 Shew Kumar Karnani is one of the signatories to the said Deed of Trust dated 29th June, 1946. Even the brother of the settlor, Suraj Kumar Karnani, a member of the Karnani family interested in the Trust requested the surviving trustees by his letter dated 8th September, 1966 i.e., after expiry of the said period of 20 years to appoint the respondent No. 2 as a trustee being the desire of the settlor expressed at his death bed. In effect he also wanted the extension of the Trust after 20 years from 1st July, 1946.

28. Mr. Tapas Kumar Roy appearing for the respondent No. 2, Jai Kumar Karnani,

the eldest son of the settlor, Indra Kumar Karnani deceased, supported the application, wanted the Trust to continue and offered himself to be appointed as Managing Trustee being a member of the settlor's family in the direct male line.

29. I therefore give opinion and/or advice and/or directions with regard to questions set out in paragraph 25 of the petition as follows:--

(i) Both the respondent No. 1 and respondent No. 2 belonging to the Karnani family should be appointed as Trustees of the said Trust;

(ii), (iii) & (iv) The respondent No. 1 and the respondent No. 2 are hereby appointed as the new trustees.

(v) The trustees including the new trustees appointed herein would manage the trust and administer the trust estates including the accretions thereto in accordance with the said Deed of Trust dated 29th June, 1946 in the manner as they may decide.

30. The costs of this application of all the parties appearing will come out of the trust estate.