

(2016) 03 DEL CK 0119

In the Delhi High Court

Case No : FAO (OS) 471/2013, CM No. 16557/2013, FAO (OS) 487/2013 and
CM No. 17012/2013

Tirathram Shah Charitable Trust and Others

APPELLANT

Vs

Anjali Birla Sawhney and Others

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 10, Order 7 Rule 11, Section 92,
Section 92(1), Section 92(2)

Citation : (2016) 4 ADDelhi 300 : (2016) 162 AIC 485 : (2016) 228 DLT 441 :
(2016) 156 DRJ 277

Hon'ble Judges : Badar Durrez Ahmed and Sanjeev Sachdeva, JJ.

Bench : Division Bench

Advocate : Ajay Kumar Tandon and Manika Goswamy, for the Appellant;
Rajshekhar Rao and Rahul Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.—1. These appeals arise out of common order dated 23.09.2013 in CS (OS) 1291 of 2010, whereby the learned single judge has dismissed the applications {IA 16634/2010 (filed by appellants in FAO(OS) 471/2015) & IA 16958/2010 (filed by appellants in FAO(OS) 487/2015) } under order 7 rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC).

2. Mrs. Anjali Birla Sawhney wife of Late Mr. Pavan Chander Mohan Sawhney and her daughter Ms. Shreya Sawhney have filed the suit for declaration and permanent injunction. They seek a declaration that either of them are entitled to be appointed as trustees of the Tirathram Shah Charitable Trust (hereinafter referred to as the Trust) and the appointment of any other person as a trustee in place of Mr. Pavan Chander Mohan Sawhney is void ab initio and the appointment of Geeta Rajpal is against the Trust Deed, intention of the settler and the family settlement. Further consequential injunctive reliefs are also sought.

3. Mr. Pavan Chander Mohan Sawhney was the elder brother of Mr. Dhruv Mohan Sawhney (Defendant No. 2). Mrs. Rati Sawhney (Defendant No. 3) is the wife of Mr. Dhruv Mohan Sawhney.

4. The Trust was established in the year 1953 by the four sons of late Rai Bahadur Lala Tirath Ram Shah as the settlors. Mr. Pavan Chander Mohan Sawhney and Mr. Dhruv Mohan Sawhney are the sons of late Mr. Puran Chand Sawhney, grandson of Rai Bahadur Lala Tirath Ram Shah.

5. Mr. Pavan Chander Mohan Sawhney was one of the trustees of the Trust besides Mr. Dhruv Mohan Sawhney and Mrs. Rati Sawhney (defendants No. 2 & 3) besides other five trustees. Mr. Pavan Chander Mohan Sawhney passed away on 13th January 2002.

6. On 07th July 2006 Mrs. Geeta Rajpal (defendant No. 4) who is not one of the family members of late Rai Bahadur Lala Tirath Ram Sawhney was made a trustee in place of Mr. Pavan Chander Mohan Sawhney.

7. It is alleged in the plaint that on 13th February 2009 a compromise was entered into between the plaintiffs and defendant No. 2 with regard to appointment of either of the plaintiffs as trustee of the Trust in place of late Mr. Pavan Chander Mohan Sawhney. The case set up by the plaintiffs is that the cause of action for filing the suit arose on 13th February, 2009 when the oral agreement was arrived at among the plaintiffs and defendant Nos. 2 & 3 in the midst of the ongoing litigation and defendant No. 2 promised that he would take appropriate steps for appointment of either of the plaintiffs as trustees of defendant No. 1 in place of Mr. Pavan Chander Mohan Sawhney. It is contended that on 17.04.2010, the plaintiffs came to know from Dr. Anand Prakash that the Defendant No. 4 had been recently appointed as a trustee in place of Mr. Pavan Chander Mohan Sawhney and as such the plaintiffs filed the Suit.

8. The defendants in the suit, i.e., the appellants in the respective appeals filed the applications as mentioned above under order 7 rule 11 CPC. Three broad grounds are raised in the application. First of all, it is contended that the suit is barred by limitation. Article 58 of the Limitation Act, 1963 lays down a period of limitation of three years from the date the right to sue accrues. It is contended that the right to sue accrued, if at all, on the death of Mr. Pavan Chander Mohan Sawhney on 13.01.2002. Mr. Geeta Rajpal was appointed as a trustee in place of Mr. Pavan Chander Mohan Sawhney on 07.07.2006 and the suit has been filed on 02.06.2010 much after the expiry of period of limitation computed from either of the two dates.

9. Secondly, it is contended that the trust deed does not stipulate that only a family member has to be appointed as a trustee or that there has to be representation from the family of Rai Bahadur Lala Tirath Ram Shah. The appointment of trustee, in case of a vacancy, is by a majority vote and Mrs. Geeta Rajpal was appointed by the remaining trustees. It is further contended that insofar as the Trust, Mrs. Geeta Rajpal and the remaining trustees (other

than Defendant 2 and 3) are concerned, there is no averment in the plaint that there was ever any agreement that either of the plaintiffs would be appointed as a trustee and thus the plaint does not disclose any cause of action qua them. Insofar as the Defendant No. 2 & 3 are concerned, it is contended that they were only two out of the remaining seven trustees and even if they had agreed to appoint either of the plaintiffs, it would not make any difference as there were five more trustees and the appointment is to be by majority vote. Thus, it is contended, that the plaint does not even disclose any cause of action against them.

10. Thirdly, it is contended that the reliefs sought are covered by Section 92(1) of the CPC and as no leave of the court has been sought the suit is barred under section 92(2) of the CPC.

11. The learned single judge by the impugned order held that the alleged oral family settlement was arrived at between the plaintiffs and defendant No. 2 on 13.02.2009 and as such, the suit instituted on 02.06.2010 was prima facie within limitation. Further it is held that the present suit is not one to vindicate the right of the public but seeks enforcement of an individual right in view of the intention of the settlors and the oral compromise arrived at between the plaintiffs and the defendants No. 2 & 3. Thus, it is held, that section 92 CPC is not applicable to the present suit and it is maintainable without seeking the leave of this court. With regard to cause of action, the learned single judge has held that as it is not disputed that defendants no. 2 and 3 are the trustees and play a major part in the administration of the Trust and till the death of Mr. Pavan Chander Mohan Sawhney, all branches of late Rai Bahadur Tirath Ram Shah were duly represented in the Trust, past precedent and practice was an indicator of the intention of the settlors. Though defendants No. 2 and 3 cannot appoint either of the plaintiffs as the trustees individually but their decision would play an important part in appointment of a trustee. Thus, it was held that the plaint cannot be nipped in the bud on the ground that no cause of action arises and the plaintiffs are entitled to a trial to prove the averments made in the plaint.

12. The Supreme Court of India in *Sopan Sukhdeo vs. Assistant Charity Commissioner*, (2004) 3 SCC 137 held that for the purposes of deciding an application under Order 7 Rule 11, the averments made in the plaint are germane and the pleas taken by the Defendant in the written statement would be irrelevant. Further, the court also emphasized that a meaningful and not formal reading of the plaint was to be adopted to nip in the bud any clever drafting of the plaint to create an illusion of a cause of action.

13. The court has to see the averments in the plaint to decide whether the suit discloses a triable cause of action. A meaningful and not a formal reading of the plaint has to be adopted to determine whether the plaint discloses a cause of action or a clever drafting methodology has been used to create a semblance of a cause of action. Where the Court comes to a conclusion that by adopting a method of clever drafting a semblance of a cause of action is being created, the

court has to nip the vexatious and meritless litigation in the bud.

14. The Supreme Court in the case of T. Arivandandam vs. T.V. Satyapal , (1977) 4 SCC 467 has held as under:-

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful " not formal " reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage....."

15. The Supreme Court in the case of T. Arivandandam (supra) held that where the suit is a flagrant misuse of the "mercies" of the law in receiving a complaint, the court has to give a meaningful reading of the complaint and not a mere formal meaning. Where on a meaningful reading of the complaint it is manifestly vexatious or meritless in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order 7 Rule 11 CPC taking care to see that the grounds mentioned therein are fulfilled. If by clever drafting an illusion of a cause of action is created, the court can nip it in the bud. The Supreme Court further held that an activist Judge is the answer to irresponsible law suits.

16. Relevant clauses of the Trust Deed dated 15.12.1953, filed along with the complaint, stipulate as under:

"IV. The following provisions shall apply to meetings and proceedings of the Trustees:-

(a) The Trustees shall hold ordinary meetings at least once a year. A special meeting may at any time be summoned by the Chairman or any other Trustee upon ten days notice being given to all the other Trustees of the business to be transaction or discussed;

(b) Five Trustees present at a meeting shall form a quorum and the decision of a majority of Trustees present at a meeting shall prevail.

(c) R.B. Lala Isher Das Sawhney will be the permanent Chairman of the Board of Trustees as long as he remains a Trustee;

POWER OF TRUSTEES

1. The number of Trustees shall not be less than 8 and more than 12.
2. If any vacancy occurs by reason of death, resignation or otherwise by operation of law or the rules, such vacancy shall be filled up by the remaining trustees by selecting such person or persons who are willing to act. The selection will be made by majority of votes.

MEETINGS

24. Rai Bahadur Lala Isher Das, the permanent Chairman, will preside at all the meetings of the Trustees. In case the permanent Chairman be not present within 15 minutes of the time fixed for holding the meeting, the Trustees present will choose one of the Trustees present to preside over the meeting,

25. In case Rai Bahadur Lala Isher Das ceases to be a Trustee the remaining Trustees shall elect one of the trustees to be Chairman, who will hold office for one year. The retiring Chairman will be eligible for re-election provided he continues to be a Trustee.

28. Questions coming up for decision before a meeting shall be decided by majority of votes. In case of equality, the Chairman will have a second or casting vote."

17. All decisions of the Trust including appointment of Trustees have to be by a majority decision. A special meeting can be summoned at any time by the Chairman or any other Trustee upon ten days notice. Five Trustees present at a meeting form a quorum and the decision of the majority of the Trustees present is to prevail. The number of Trustees is not less than 8 and not more than 12. In case of a vacancy, it is to be filled up by the remaining trustees by a majority vote and by selecting such person or persons who are willing to act. The deed stipulates that Rai Bahadur Lala Isher Das, the permanent Chairman, is to preside at all the meetings of the Trustees and in case he is not present within 15 minutes of the time fixed for holding the meeting, the Trustees present will choose one of the Trustees present to preside over the meeting, In case Rai Bahadur Lala Isher Das ceases to be a Trustee the remaining Trustees are to elect one of the trustees to be Chairman, who will hold office for one year. Questions coming up for decision are to be decided by majority of votes and only in case of equality, the Chairman is to have a second or casting vote.

18. The Trust Deed does not indicate that the branches of the family of late Rai Bahadur Tirath Ram Shah have to be represented on the Trust as Trustees. It also does not stipulate that the family in any manner has any extra say in the management of the trust or its affairs. Even as per the Plaintiffs out of 8 trustees only 3 represented the family and the majority were outsiders.

19. The suit filed is based on an alleged oral agreement with the Defendant 2 and 3. The contention in the plaint is that there was an oral agreement with the Defendant 2 & 3 that they would appoint one of the plaintiffs as the trustee in place of Mr. Pavan Chander Mohan Sawhney. There is no averment that there was any such understanding with the other defendants, i.e. the Trust and Mrs. Geeta Rajpal.

20. In our view, the learned Single Judge has committed an error in taking the date of the alleged promise (i.e. 13.02.2009) for reckoning the period of limitation. The suit filed on 02.06.2010 has been held to be within limitation. The learned Single Judge erred in not appreciating that the Plaintiffs claimed appointment on account of the demise of Mr. Pavan Chander Mohan Sawhney and in his place. He died on 13.01.2002. As the Plaintiffs are claiming appointment in his place on account of his death, clearly the cause of action would accrue on his demise. Furthermore, Defendant no. 4 was appointed as a trustee, admittedly in his place, on 07.07.2006. Even if one were to assume that the cause of action did not accrue on the said demise, the same would clearly accrue when the remaining trustees appointed defendant No. 4 as a trustee in place of Mr. Pavan Chander Mohan Sawhney. Reckoned from either of the two dates, the suit is clearly barred by limitation as laid down in Article 58 of the Schedule to the Limitation Act, 1963 that stipulates a period of three years from "when the right to sue first accrues".

21. The alleged oral agreement is set up only against the defendant 2 & 3. There is no averment that either the Trust or the other remaining trustees ever agreed to appoint either of the Plaintiffs as a trustee. Since there was no such promise by the Trust or the remaining trustees to appoint either of the plaintiffs as a Trustee, the plaint clearly does not disclose any cause of action as against the Trust. The appointment of the Defendant No. 4 as a Trustee on 07.07.2006 remained unchallenged for nearly four years the plaint also does not disclose any cause of action against Defendant No. 4. The dismissal of the application under order 7 rule 11 CPC filed by the Defendants 1 and 4 is clearly erroneous.

22. Insofar as the application under order 7 rule 11 CPC filed by the Defendant 2 & 3 is concerned, that has also been incorrectly dismissed in as much as the suit is clearly barred by limitation. A reading of the clauses of the Trust Deed shows that there is no such right that can be claimed by the Plaintiffs. The alleged promise is also of no consequence as the same is alleged to have been made on 13.02.2009 by which time the vacancy had already been filled up by the trustees. Even otherwise, the alleged promise is of no consequence as the defendant 2 and 3 are only two out of the seven remaining seven trustees and the decision to appoint is by a majority vote and clearly the defendants 2 & 3 would comprise a minority.

23. On a meaningful reading of the plaint, it is apparent that the present plaint is clearly one that fits into the category of cases, as laid down by the Supreme Court in *T. Arivandandam* (supra), which are manifestly vexatious, and meritless,

in the sense of not disclosing a clear right to sue. Clever drafting has been used to create the illusion of a cause of action when none exists. This is a fit case, in our view, where we should exercise our powers and nip the vexatious litigation in the bud.

24. In view of the above, the impugned order is set aside, the appeals are allowed. The applications i.e. IA 16634/2010 (filed by appellants in FAO(OS) 471/2015) & IA 16958/2010 (filed by appellants in FAO(OS) 487/2015) under order 7 rule 11 CPC are allowed. The plaint is rejected as being barred by limitation and failing to disclose any cause of action.

25. Since we have held that the suit is barred by limitation and does not disclose any cause of action, we are not examining the plea of the appellant that the learned single judge has further erred in holding that the reliefs claimed by the plaintiffs are not one to vindicate the right of the public but seek enforcement of an individual right and section 92 CPC is not applicable. We leave this question open.

26. Parties are left to bear their own costs.