(2010) 05 AHC CK 0282

Allahabad High Court

Case No: None

Sri Anant Narayan Singh and Others		APPELLANT
	Vs	
Mangla Prasad Srivastava and Others Maharaja Anant Narayan Singh and Another Vs Ram Ji Sonkar and Others		RESPONDENT

Date of Decision: May 3, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151, 2, 92
- Trusts Act, 1882 - Section 37

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Rakesh Tiwari, J.
Heard learned Counsel for the parties and perused the record.

2. The above said civil revisions have been preferred by the defendants-revisionists challenging the validity and correctness of the judgment and order dated 20.2.2010 passed by Additional District Judge, Court No. 9, District-Varanasi in Misc. Case No. 24 of 2002 (Mangla Prasad Srivastava v. Maharaja Anant Narain Singh and Ors.) as well as in Misc. Case No. 47 of 2003 (Ram Ji Sonkar and Ors. v. Maharaja Anant Narain Singh and Ors.), whereby the application filed u/s 92 of C.P.C. read with Section 151 of C.P.C. and Order I, Rule VIII of C.P.C. has been allowed.

3. Since defect in this revision has been removed by implementing respondents No. 6 to 11, office is directed to allot regular number in this civil revision.

4. Since civil revision No. 202 of 2010 has been filed by wives, daughters and relatives of the plaintiffs-respondents along with others, it is connected with Civil

Revision No. 39 of 2010.

BACKDROP:

5. The facts culled out giving rise to the present civil revisions are that Maharaja Vibhuti Narain Singh was the ruler of State of Banaras. After independence the State of Banaras merged with the dominion of India under a merger agreement enter into between the erstwhile Banaras State and the dominion of India. As per Article 3 of the merger agreement dated 4.9.49, the Mahraja was entitled to full ownership and enjoyment of private properties belonging to him on the date of agreement pursuant to the agreement of the immovable properties, securities and cash balance held by the Maharaja was permitted to be held by him as his private property.

6. From the above properties Maharaja Vibhuti Narain Singh created a trust namely the Maharaja Dharamkar Nidhi Trust in the name of Maharaja Narain Dharamakar Nidhi Trust under the registered trust deed registered on 9.3.58 initially the trustees of the aforesaid trust were as follows:

1. His Highness Maharaja Sri Vibhuti Narain Singh Fort, Ramnagar, Varanasi.

2. Sri Kanayalal Maneklal, Ex-Rajyapal, Utta Pradesh and Kulpati, Bhartiaya Vidya Bhavan, Bombay.

3. Sri Bidhubhushan Malik, Retd. Chief Justice, Allahabad High Court and Commissioner, Minority Languages, II, Edmonston Road, Allahabad.

4. Sri Lal Bahadur Shastri, Minister for Commerce and Industries, Government of India, 1, York place, New Delhi.

5. Sri Jharkhandi Prasad Narain Singh, Krishnabag, Nagwa, Varanasi.

6. Sri Pt. Shyamdhar Misra, M.P. Parliamentary Secretary, Cooperative & Community Development, Government of India, Krishi Bhavan, New Delhi.

7. Maharaja Vibhuti Narain Singh died on 25.12.2000 as most of the founder members of the Board of Trust expired by the time , new members were inducted. The trust continued to function trust its object for last about 50 years. However the plaintiff opposite parties namely 1. Mangla Prasad Srivastava, 2-Rama Shanker Verma 3-Laksheshwarnath Sharma, 4-Beni Madhav, 5-Sri Mangla Prasad Mishra 6-Rajkumari Har Priya 7Rajkumari Vishnu Priya, 8-Raj Kumari Krishna Priya, 9.-Pramod Chand Srivastava, 10-Dharmdatt Sharma 11Shivnandan filed a petition against the revisionist u/s 92 of CPC read with Section 151 of CPC, before the Court of District Judge, Varanasi. This petition was supported by an application under Order 1, Rule 8 CPC read with Section 92 CPC and supported by an affidavit accompanied by Stay application u/s 151 read with order 39, Rule 1 and Section 2 CPC for grant of permanent injunction.

8. The petition was registered as case No. 24 of 2001. Notices were issued by the Court to the revisionist/defendants and plaintiffs-appellants were granted an ex parte temporary injunction in their favour on the first date of filing of the petition itself. Consequently on receipt of notice the revisionist filed an application on 24.2.2004 for vacation of the temporary injunction and also filed objection supported by affidavit before the court below.

9. The record shows that court below did not pass any order on the stay vacation application and the objections filed by the revisionist and by the impugned order dated 20.2.2010. The Addl. District Judge Court No. 9, District-Varanasi granted permission to the plaintiff opposite parties for instituting plaint as regular suit. In pursuance of the order dated 20.2.2010 the petition filed by the plaintiff u/s 92 CPC has been registered as suit No. 9 of 2010 in the court of District Judge, Varanasi on 15.3.2010.

10. The order dated 20.2.2010 has been assailed by the revisionist on the ground that the ex parte temporary injunction in favour of the plaintiff of the parties was granted by the court earlier without any application of mind and before granting permission to the plaintiff opposite parties for instituting the plaint, it was issued caste upon the court to see whether any case/ suit in public interest is made out or not.

11. It is in the aforesaid backdrop in the argument that counsel for the revisionist has argued that court below has failed to exercise the jurisdiction vested in it and the temporary injunction granted by the court below in favour of the plaintiff even before permission was granted u/s 92 of CPC was patently illegal. It is stated that the discretion exercised by the court below was neither legal nor judicial and thus the court below has committed manifest error of law while passing the impugned order.

12. Counsel for the appellant has vehemently urged that after perusal of the entire plaint along with relief clause shows that plaintiff Nos. 1, 3 and defendant No. 2 have prayed to be appointed as office bearers in the Board of trustees after removal of the existing trustees; that this fact clearly shows that case had been filed with malafide intention for personal benefits and not in public interest which is not permissible u/s 92 C.P.C. According to him the real motive of the plaintiff opposite parties is to capture the trust and its properties in the garb of legal proceedings u/s 92 CPC even though none of the applicants have any existing interest in the trust nor thus have any locus standi to move such petition.

13. The second limb of the argument of the learned Counsel for the revisionist is that the court below failed to appreciate that trust in question created and established by late Vibhuti Narain Singh was in the nature of public trust having private character as the trust deed provides control and management of trust in the erstwhile founder-ruler of Banaras and after his death his descendants deemed

successor to the Gaddi and some properties have been sold by the trust for the proper maintenance of the properties of the trust belonging to the founder himself. This according to him is conclusive proof to show that trust was of private nature hence no application u/s 92 was maintainable.

14. It is urged that the Court below has committed a manifest error of law while passing the impugned order on the assumption that while executing sale deed of trust properties permission ought to have been taken by the Trustees under the provisions of Hindu Public Religious Institution (Prevention of Dissipation of the Properties) Act, 1962 and Rules of 1965, as the aforesaid Act was repealed by Act No. 31 of 2000. Hence no permission is required by the trustees before executing sale deed of trust properties in view of indenture/clause contained in paragraph No. 22 of the Trust deed and also in view of Section 37 of the Indian Trust Act.

15. It is urged that the trust properties were sold by founder of the trust and the Board about 30-40 years back in order to save the properties of trust from trespassers and for better management of the properties in accordance with Clause 22 of the trust deed; that sale proceeds were utilized/invested in accordance with the trust deed. It is stated that copies of the relevant resolutions passed by the trustees between 1964-1981 though were filed along with objections of the revisionist but court below altogether ignored the said documents and has committed an error of law apparent on face of record.

16. It is urged that the opposite parties have no interest even remotely in the trust and they are not connected in any manner either with the functioning of the trust or in its management. Neither they have any contribution in the Trust nor are its'' beneficiaries and simply because they are resident of the area, where the trust operates will not make plaintiffs an interested person in the trust within the meaning of Section 92 C.P.C. The courts below have therefore committed an error of law in the impugned order by not recording any finding or its prima-facie satisfaction after going through the plaint regarding the fact as to what breach of trust deed had been committed by the trustees. It is stated that only on vague and scandalous allegations in the plaint, court below has presumed that there had been a breach of trust without there being any material or evidence on record.

17. Sri P.M.N. Singh, learned Counsel for the revisionist further submits that reading of Section 92 along with judgment rendered by the apex court in the case of Mahant Harnam Singh, Chela of Bhai Narain Singh Vs. Gurdial Singh and Another, would show that because plaintiffs-opposite parties claimed themselves to be residents of locality no legal right is vested in them u/s 92 CPC of having an interest in the trust. He has relied upon paragraph 6 of the aforesaid judgment which is as under:

As we have indicated earlier, in the plaint the plaintiffs claimed interest in the trust property in their capacity of representatives of the owners of the land situated at village Jhandawala and of residents of village Jhandawala. The findings of fact

recorded show that the land, which was donated to this institution, was given by the inferior owners of this village out of their joint land. The plaintiffs respondents did show that they were Lambardars in the village but no attempt has been made at any stage to prove that any of the two plaintiffs was an inferior owner of any land situated in this village, or that he was a descendant or a successor-in-interest of any of the inferior owners who donated the land to this institution in the year 1904.The mere capacity as Lambardars does not entitle the plaintiffs respondents to claim that they are representatives of the inferior owners of the land who donated the land to this institution. The second ground of claim was that the plaintiffs-respondents were residents of village Jhandawala, but, again, there is no pleading and no evidence tendered to show that the residents of village Jhandawala in general had any such interest in this trust which could entitle them to institute such a suit. The only allegation was that a Langar used to be run in this institution where free kitchen was provided to visitors. It was nowhere stated that any such free kitchen was being run for the general residents of village Jhandawala who could, as of right, claim to be fed in the Langar. Mere residence in a village where free kitchen is being run for providing food to visitors does not create any interest in the residents of the village of such a nature as to claim that they can institute a suit for the removal of the Mahant. The nature of the interest that a person must have in order to entitle him to institute a suit u/s 92, C.P.C., was first examined in detail by the Madras High Court in T.R. Ramachandra Aiyar v. Parameswaran Unni ILR 42 Mad 360 : AIR 1919 Mad 384. After the dismissal of the suit u/s 92, C.P.C., by the District Judge, the case came up in appeal before Wallis, C.J., and Kumaraswami Sastri, J., who delivered dissenting judgments. The appeal was dismissed and then came up before a Full Bench of three Judges under the Letters Patent. Three different judgments were delivered by the members of the Full Bench, Abdur Rahim, Oldfield and Coutts- Trotter, JJ. Wallis, C.J., when dealing with the appeal at the earlier stage, expressed his opinion that to entitle him to sue u/s 92, C.P.C., it is not enough that the plaintiff is a Hindu by religion, but he must have a clear interest in the particular trust over and above that which millions of his countrymen may be said to have by virtue of their religion; and this opinion was expressed even though the word "direct" in S. 92, C.P.C., had been omitted. It is not necessary to refer to other opinions expressed by the learned Judges in that case in view of the decision of their Lordships of the Privy Concil in Vaidya-natha Ayyar v. Swaminatha Ayyar 51 Ind App 282 : AIR 1924 PC 221 (2), where they approved the opinion expressed by Sir John Wallis, C. J., in the case cited above, and held: "They agree with Sir John Wallis that the bare possibility, however remote, that a Hindu might desire to resort to a particular temple gives him an interest in the trust appears to defeat the object with which the Legislature inserted these words in the section. That object was to prevent people interfering by virtue of this section in the administration of charitable trusts merely in the interests of others and without any real interests of their own." Agreeing with the view expressed by the Privy Council, we hold that in the present case the plaintiffs/respondents, who were merely Lambardars and

residents of village Jhandawala, had, in those capacities, no such interest as could entitle them to institute this suit.

18. He has also relied upon a judgment rendered in the case of Mahanth Gurmukh Das v. Bhupal Singh and Ors. reported in 1987 ALL. L. J. 369 wherein interpretation of Section 92 is the question as to who can sue or who is a person "having an interest in the trust" was considered by the case.

19. Noting the provisions of Section 92 after its amendment by C.P.C. (Amendment) Act, 1976 with effect from February 1, 1977, the court observed that perusal of the sections makes it clear that where a person other than the Advocate General, wishes to institute proceedings in respect of a charitable or religious nature, he has to obtain leave of the Court. The person who can do so has to be a person "having an interest in the trust". If the claim is disputed by the opposite party, the court should apply its mind to the question on the basis of the material on record and come to a conclusion, prima facie though it may be, on the question whether the person seeking its leave can be treated to be a person having an interest in the trust.

20. In paragraph 4 of the said judgment, the Court while considering the claim of the appellant in that case noticed that the appellants alleged themselves to be follower of Kabir Panth. This was the entire consideration of the question whether the applicants were persons having interest in the trust and where admittedly the parties are at issue on this question and have led evidence before the Judge, it was necessary for the District Judge to have recorded a definite finding about it.

21. It is then prayed that in the aforesaid circumstances the impugned order being illegal, arbitrary and had been passed without application of mind the effect and operation of the judgment and order dated 20.2.2010 passed by the Addl. District Judge, Court No. 9 District Varanasi in Misc. Case No. 24 of 2002 (Mangla Prasad Srivastava v. Maharaja Anant Narain Singh and Ors.), be stayed otherwise the plaintiff- revisionist shall suffer irreparable loss and injury.

22. After hearing learned Counsel for the revisionists and after perusal of record, prima facie, it appears that every person who take benefits from the work of a religious and charitable trust cannot claim to have an interest in the trust.

23. The court appears to have failed to consider that if the plaintiffs are themselves interested in becoming trustees in the trust by removal of present trustee then their application u/s 92 is not that of in public interest. However, by the impugned order the court has decided the status or locus standi of the plaintiffs-defendants without any basis, though they have not prima facie establishes to know "persons interested in the trust".

''Discretiion'' said Lord Mansfield in R.V. Wilkes, ''when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not be humour: it must not be arbitrary, vague and fanciful but legal and regular''. (See Craies on

Statute Law, 6th Edn., P. 273 and Ramji Dayawal & Sons (P) Ltd. v. Invest Import, SCC p. 96, para 20)

Discretion" undoubtedly means judicial discretion and not whim, caprice or fancy of a judge. (See Dhurandhar Prasad Singh v. Jai Prakash University.) Lord Halsbury in Susannah Sharpe v. Wakefield considered the work "discretion" with reference to its exercise and held: (All ER p. 653 F-G)

When discretion applied to Court of justice, it literally means

Though the work, "discretion" literally means and denotes an uncontrolled power of disposal yet in law, the meaning given to this word appears to be a power to decide within the limits allowed by positive rules of law as to the punishments, remedies or costs. This would mean that even if a person has discretion to do something the said discretion has to be exercised within the limit allowed by positive rules of law. The literal (sic legal) meaning of the world "discretion" therefore, unmistakably avoids untrammelled or uncontrolled choice and more positively points out at there being a positive control of some judicial principles.

24. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution: nice discernment, and judgement directed by circumspection: deliberate judgement; soundness of judgement; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons.

25. It appears from the judgments cited by the counsel for the respondent that mere being residents of the locality or being benefited by the charitable work of the trust will not entitle a person to file application u/s 92. It has to be established them as to whether they have interest in the particular trust and which is that interest in the trust.

26. The court below appear to have totally failed to give reason upon which it formed opinion that prima-facie case of mismanagement is made out and even court below failed to discuss the objections of the revisionist and thus the court below had failed to exercise jurisdiction vested in it and to give reason upon which it formed opinion that any prima-facie case of mismanagement is made out that the court below failed to discuss the objections of the revisionist and thus failed to exercise jurisdiction vested in it by granting relief to the strangers to the trust, who are neither trustees nor persons interested in the trust u/s 92 of CPC. Thus, the permission given by the court below by the order impugned is illegal and the said order is perverse, illegal and cannot be sustained in the eyes of law being against the pith and substance of the Section 92 CPC read with Order I Rule 8 of CPC and is liable to be set aside.

27. Prima facie according to Clause 22 and 23 of the deed dated 7th May, 1958 clearly establishes that settler of the trust late Maharaja Vibhuti Narain Singh in his life time would hold the post of Chairman in the trust and thereafter successor to his gaddi of varanasi as such control of settler and therefore his successor always remained hence the character of trust as public trust of the private character was never distributed.

28. The order impugned on the ground that it cannot be sustained as Section 92 is not applicable in the present facts and circumstances of the case for the reason that the trust created by Maharaja Vibhuti Narain Singh was in the nature of public trust having private character.

29. The relief sought by them in the application, therefore, could not have been sought for by them u/s 92.

30. Prima facie case for interference is made out.

31. Admit.

32. Connect with Civil Revision No. 202 of 2010.

33. Issue notice to the respondents, returnable at an early date. Steps shall be taken by both modes and by publication in two newspapers i.e. ''Hindustan Times'' and ''Dainik Jagaran''.

34. Till further orders of this Court, the judgment and order dated 20.2.2010 passed by Additional District Judge, Court No. 9, District Varanasi in Misc. Case No. 24 of 2002 (Mangla Prasad Srivastava v. Maharaja Anant Narain Singh and Ors.) as well as in Misc. Case No. 47 of 2003 (Ram Ji Sonkar and Ors. v. Maharaja Anant Narain Singh and Ors.) in Civil Revision No. 202 of 2010 and further proceedings of suit No. 9 of 2010 as well as in suit No. 10 of 2010 respectively pending in the court of District Judge, Varanasi shall remain stayed. It is further provided that without notice of this Court, property in question shall not be alienated or its nature shall not be changed.