

(2014) 11 CAL CK 0123

Calcutta High Court

Case No: GA 1005 of 2013 and CS 95 of 2013

Renu Agarwala

APPELLANT

Vs

Sushila Devi Agarwal

RESPONDENT

Date of Decision: Nov. 7, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 92

Citation: (2015) 4 WBLR 618

Hon'ble Judges: Arijit Banerjee, J

Bench: Single Bench

Advocate: Suman Dutta, M.S. Tewari and S.K. Tewari, Advocate for the Appellant; S.P. Sarkar, Sr. Adv., Asit Baran Routh, Subhodeep Sen and Bimalendu Das, Advocate for the Respondent

Judgement

Arijit Banerjee, J.

"Maharshi Menhi Charitable Trust" (hereinafter referred to as the said "Trust") is a public charitable trust that was formed in the year 1999. Disputes and differences between the two groups of trustees of the said trust have culminated in the present suit and application.

2. The undisputed facts of the case are that by a deed of declaration of trust dated 19th May, 1999, the defendant no. 1 settled the said trust. The first trustees of the said trust were the plaintiff no. 1, defendant no. 1, Smt. Kiran Bhansal, Smt. Sangita Jain and Smt. Sujata Bathwal. The objects of the said trust were as follows:-

"OBJECTS

The objects of the Trust shall be:

I. To establish and promote the establishment of and/or to render aid to School, Colleges and other educational training institutions not for earning profits.

II. To establish, support, maintain or aid technical engineering and/or commercial colleges and also schools and colleges for Science, Arts, etc. and for promotion of Science, Literature and fine arts, and for the diffusion of useful knowledge and for collection of various works of natural arts and natural history or other useful subjects not for earning profits.

III. To maintain or grant aid or relief to poor and deserving peoples.

IV. To provide medical aid and relief to the suffering people by aiding, establishing and/or maintaining hospitals, medical schools and colleges, dispensaries, nursing homes, clinics, sanatoriums and other institutions meant for rendering medical relief and not for earning profits.

V. To establish, support, maintain or grant aid to maternity homes, child welfare centres, orphanages and widow's homes and other institutions, associations or societies for public benefit as the Trustees may think fit and proper and not for earning profits.

VI. To establish, maintain and/or grant, studentship, scholarships and other kinds of aid to poor and/or deserving students including supply of books, stipends, medals and other incentives to study and to provide food, residence and travelling expenses etc. for them.

VII. To do all acts, things, arrangements that may be necessary for the purpose of advancement of education and learning and to do any other acts for the advancement of general public utility including construction and maintenance of rest houses for the benefit and relief of general public not involving the carrying on of any activity for profit, without distinction of religion sex, caste, colour and creed throughout the territory of Union of India.

VIII. To publish and offer for a free circulation or sale at cost price journals, pamphlets, books and/or leaflets, that the trustees may consider desirable for furtherance of the objects of the Trust."

3. Clauses 7, 8, 9, 19, 23 and 29 of the said trust deed provided as follows:-

"7. The Trustees may accept any donations or contributions in cash or kind or otherwise from the settlor or any other member of his family or any other person or persons, firms, company, society, body corporate, institution or association and for the furtherance of the public and charitable objects of the Trust or for any one or more of them, the Trustees may also takeover the management of any charitable or public institutions on such terms as they think fit and may manage such institutions for charitable purposes.

8. The Trustee shall be at liberty to sell such portion or portions of the movable or immovable properties forming part of Trust Fund by public auction at such prices and on such terms and conditions relating to title or otherwise in all respects as they

may in their absolute discretion think fit and to buy or rescind or vary any contract for the sale thereto, resell the same and for that purpose to execute all necessary conveyances transfer or other documents and to pass valid and effectual receipts and discharge for all money received by the trustees and sign and execute any sale deed or other assurance on behalf of the Trust and to get the same registered according to law.

9. The Trustees may raise or borrow money required for the purpose of the trust on a mortgage, by hypothecation, pledge or pawn of the Trust properties or any part thereof with or without any security and at such rate of interest and on such terms and conditions as the trustees may in their absolute discretion think fit.

19. The trustees may at any time or times hereafter, co-opt additional Trustee/trustees not exceeding three at a time. The minimum number of Trustees will be three and the maximum number of trustees at any time will not exceed eleven. All trust properties shall vest in the additional trustee or Trustees together with the other Trustees then continuing with all power, provisions and declarations as in this deed contained and it shall not be necessary to make or execute any formal transfer of assets in his/their favour. The property shall be deemed automatically to have been transferred in favour of the incoming Trustees jointly with the other trustees.

23. (i) Meeting of the Board of the Trustees shall be held at least once in three months.

(ii) Three Trustees shall form a quorum for a meeting of the Trustees.

(iii) All matters will be decided by majority unless otherwise specified and in case of equality of votes, the Chairman will have casting vote.

29. For the object of the Trust or any one or more of them the trustees shall be entitled to spend the income of the Trust and/or the estate and shall not be entitled to spend the corpus of the fund or estate except with the consent of at least three forth majority of all the trustees for the time being."

4. By an amended declaration of trust made on 1st February, 2000, the original trust deed was amended by incorporating two clauses which are not material for the present purpose.

5. By yet another deed of declaration and variation made on 5th May, 2001, the plaintiff nos. 2, 3 and 4 were inducted as trustees of the said trust.

6. In the Year 2003, the trust purchased about 10 bighas of land in Agarpara.

7. The disputes between the two groups of trustees started in July 2006. At the meeting of the trustees held on 30th July, 2006, three new trustees being the defendant nos. 3, 4 and 5 were inducted in the said trust. The plaintiffs allege that such meeting was held without serving any notice on them.

8. The plaintiff no. 1 further alleges that on 4th August, 2006, she wrote a letter to the Board of Trustees communicating her desire to resign as a trustee because of alleged mismanagement of the trust affairs. Till 2011, there was complete silence on the part of the defendants with regard to such letter. After a lapse of five-years, suddenly, by a letter dated 29th May, 2011, the Board of Trustees purported to accept the resignation of the plaintiff no. 1.

9. The plaintiffs allege that in the minutes of meetings of the trustees dated 10th December, 2006 and 24th June, 2007, there is no mention of the resignation of the plaintiff no. 1. By a letter dated 27th June, 2011, the plaintiff no. 1 objected to the letter dated 29th May, 2011 whereby the resignation of the plaintiff no. 1 was purported to be accepted. By a letter dated 29th July, 2011 addressed to the Managing Trustee of the said trust the plaintiffs complained of mismanagement of the trust affairs.

10. Sometime in 2012 the proposed revised trust deed was placed before the Board for approval. Clauses 3.28, 3.29, 3.32 and 8 of such proposed revised deed were found to be objectionable by the plaintiffs. The said clauses are set out hereunder:-

"3.28 To invest the moneys of the Trust upon such securities and in such manners as may be determined by the Trustees from time to time and to liquidate such investments in such manners and at times as may deemed expedient but subject to the compliance with the relevant laws.

3.29 To sell, improve, manage, lease, mortgage dispose of or otherwise deal with all or any part of the properties of the Trust for any of the purposes thereof.

3.32 To take over, affiliate, amalgamate or merge with any other Trust, Society, Association, Institution, Body or Group of persons having objects similar to those of this Trust.

8. There shall continue to be a Board of Trustees of the Trust consisting of not more than 25 (Twenty Five) and not less than 5 (Five) members who will direct and manage the Trust in the manner hereinafter provided. No Trustees shall be entitled to receive or be paid any remuneration whatsoever for acting as a trustee."

11. A legal notice dated 24th July, 2012 was issued on behalf of the plaintiffs addressed to the defendant no. 1 complaining of illegal activities in the running, maintenance and administration of the said trust. The said notice was replied to by the defendant no. 1 by a letter dated 30th July, 2012.

12. It is further alleged by the plaintiffs that purported meditation camps were organized by the defendant trustees on various dates spending huge sums of money but no break up of the costs incurred were ever made available for the approval of the trustees.

13. The plaintiffs allege that the proposed amendment of the trust deed is beyond the jurisdiction of the trustees and is illegal. The proposal for shifting the trust office from 3 Baishnab Seth St., Calcutta to Agarpara is also mala fide and has been introduced for the purpose of making it inconvenient for the plaintiffs to attend the meetings of the trusts and/or to participate in the activities of the trust. The proposal to enhance the maximum number of trustees to 25 is to enable the defendants to bring in outsiders and dominate the administration of the trust.

14. The plaintiffs further allege that the property at Agarpara was purchased by the trust for the purpose of running a free homeopathy dispensary therefrom. However, the defendants are eager to use the said property commercially.

15. On the basis of the aforesaid allegations the plaintiffs have prayed for injunction restraining the respondents from acting as trustees of the said trust and from modifying the deed of trust. An order of injunction has also been prayed for restraining the respondents from dealing with or dispose of or encumbering any of the assets and properties of the said trust.

16. The Ld. Counsel for the plaintiffs has relied on a decision of the Andhra Pradesh High Court in the case of Shavax A. Lal and Others Vs. Syed Masood Hosain and Others, which lays down the general principles of administration of a public charitable trust and also as to when a receiver should be appointed in a suit alleging breach of trust. Reliance has also been placed on a Supreme Court decision reported in Dr. T. Varghese George Vs. Kora K. George and Others, which refers to Section 92 of the Code of Civil Procedure and reiterates that two or more persons having interest in a trust may institute a suit in the Principal Civil Court of Original jurisdiction to obtain a decree concerning a public charity for the various purposes mentioned therein.

17. Appearing on behalf of the defendants, Mr. S.P. Sarkar, Ld. Senior Counsel laid emphasis on clause 8 of the trust deed dated 19th May, 1999 which gives express powers to the trustees to sell trust property. He also referred to Clause 15 of the amended trust deed 5th May, 2001 which provides, *inter alia*, that any decision to deal with the corpus of the trust will have to be approved by two-third majority of the trustees for the time being. He also relied on clause 16 of the trust deed dated 19th May, 1999 which provides as follows:-

"16. The Trustees may from time to time and whenever necessary frame scheme and rules and regulations to carry out the objects of the Trust and otherwise for giving effect to the objects and purposes of the Trust and also to vary, alter and amend the same from time to time as the trustees may in their discretion deem fit and proper."

18. Relying on the said clause Mr. Sarkar submitted that detailed provision has been made in the trust deed for administration and internal management of the said trust and there should be minimal interference by the court. He also referred to

Clauses 37 and 38 of the trust deed dated 19th May, 1999.

19. Referring to the allegations regarding non-functioning of the charitable homeopathy dispensary, Mr. Sarkar submitted that such allegation was completely baseless and speculative. Such dispensary is running and about 200 patients visit such dispensary everyday.

20. Referring to the allegation in paragraph 17 of the petition that the induction of defendant nos. 3, 4 and 5 as trustees of the said trust was done by the defendants without notice and behind and back of other trustees, Mr. Sarkar refers to paragraphs 16 and 17 of the affidavit-in-opposition and submits that such allegation is not only stale but also false. The defendant nos. 3, 4 and 5 were inducted by a resolution duly adopted in a meeting duly and properly convened and held on July 30, 2006 upon prior notice to all the trustees. The plaintiff no. 1 personally wrote a letter dated July 31, 2006 informing the defendant no. 1 about her inability to attend the said meeting held on July 30, 2006 due to her ill health. Copy of the said letter is included in Annexure A to the affidavit-in-opposition.

21. Mr. Sarkar further submits that the plaintiff no. 1 has not been attending meetings of the trustees regularly in spite of service of due and proper notice. The plaintiffs have taken no interest in the administration of the said trust and the present suit has been filed merely to harass the defendants on the basis of false and speculative allegations. Nothing blatantly wrong was ever done by the defendants who have always acted within their powers. The income of the said trust has doubled between 2006 and 2012 and no injury has been caused to the said trust.

22. Mr. Sarkar relied on a Division Bench decision of this Court in the case of Babulal Choukhani Vs. Western India Theatres Ltd. and Another, in support of his submission that an order of injunction is not be granted in favour of the plaintiff just because no harm thereby will be caused to the defendants. The plaintiff has to make out a proper case in support of his prayer for prohibitory injunction.

23. I have considered the rival contentions of the parties. When the application was moved, an order dated 10th May, 2013 was passed by I.P. Mukherjee, J. recording an assurance given on behalf of the defendants that the Agarpara property is the original office of the trust and that no steps will be taken till the disposal of the application to transfer, encumber, part with possession or otherwise deal with that property and that the nature or character of the property will not be changed. This Court is apprised by Ld. Counsel for the plaintiffs that the plaintiffs have filed a contempt application against the defendants for alleging violation of the assurance given to this Court and on such application I.P. Mukherjee, J. has issued a Rule on 2nd May, 2014. However, I am not concerned with such contempt application.

24. The facts and circumstances of the case reveal that there are allegations and counter-allegations between the two groups of trustees. From the records of the case it does not appear that the plaintiffs have been active or interested in the

management and administration of the said trust. The trust deed as modified from time to time provides for checks and balances and no trustee can act like an autocrat or according to his own sweet will. All decisions are to be taken by a majority of the trustees.

25. The court would not normally interfere with the internal management of a trust unless glaring irregularities in the administration of the trust are demonstrated clearly by the plaintiff. No such blatant illegality or irregularity has been demonstrated by the plaintiffs in the instant case.

26. Further, the case involves seriously disputed questions of fact which cannot be adjudicated on affidavit. It is only at the trial of the suit that such questions of fact can be adjudicated upon proper witness action.

27. The said trust is being run and administered by a competent Board of Trustees consisting of people duly inducted in the Board in accordance with law. It appears that the plaintiffs have some axe to grind against the defendants and accordingly, the present application has been filed. In my opinion, no *prima facie* case has been made out by the plaintiffs nor the balance of convenience lies in favour of passing orders as prayed for at this interlocutory stage.

28. For the reasons stated above this application fails and is dismissed. The interim order stands vacated. However, there will be no order as to costs.