(1880) 02 CAL CK 0014

Calcutta High Court

Case No: None

Brojomohun Doss and Others		APPELLANT
	Vs	
Hurrololl		RESPONDENT

Date of Decision: Feb. 10, 1880

Citation: (1880) ILR (Cal) 700

Hon'ble Judges: Richard Garth, C.J; Pontifex, J

Bench: Division Bench

Judgement

Richard Garth, C.J.
In this case we agree with the opinion of the lower Court, that even if the plaintiffs have proved themselves to be the heirs of the testator, they are excluded by his will from taking any interest in his estate. The will devotes his estate to religious and charitable trusts exclusively.

2. But the plaintiffs have argued before us, that even if they have no personal interest, still they are entitled as heirs to see that the religious and charitable trusts are properly carried out, inasmuch as there is no one else to put the Court in motion, and thus obtain the due administration of the trusts.

3. It has never yet, we believe, been decided that the representatives of a testator are entitled to sue for the enforcement of trusts created by him for religious or charitable purposes, but in which they are not personally interested. In England the due administration of charitable and religious trusts is enforced by the information of the Attorney-General at the relation of some private individual. But in this country there is no public officer endowed with such a faculty. As it would lead to great abuse in trusts of this nature, unless some person was able to bring them under the control of the Court, and as in this country there is no properly constituted authority for the purpose, we should, as at present advised, be disposed to hold, that the representatives of a testator, who had created such a trust, are the persons who would be entitled, if a proper case were made out, to institute proceedings for the purpose of having abuses in the trust rectified; but with the qualification that it

would be inadvisable for a Court to admit a suit of this nature, unless the plaintiff gave sufficient security for costs, in the same way as the Attorney-General in England would refuse to allow his name to be used to an information except at the instance of a responsible relator.

4. But assuming that the plaintiffs in this case are the representatives of the testator, and as such entitled in a proper case to enforce the due performance of the trusts, the question remains whether they have made such a case.

5. Now it seems to us that the principal motive of the suit was to obtain a declaration that they had some personal interest in the testator''s estate, and that in this they have failed.

6. They now desire to go beyond this, and to obtain a decree for the administration of the trusts.

7. They do, indeed, by their plaint raise a case of suspicion; but in our opinion that is not enough to entitle them to a decree for an account. Of course, if they were personally interested under the will, or in the estate, they would, as of right, be entitled to an account against the executor or trustee.

8. But that is not their position. The decree which they now ask for, they solicit in the interests of the charity, and not in their own interest; and to be entitled to such a decree, we think it is not sufficient for them to make out a case of mere suspicion or to rely on particular passages of the defendant''s written statement. They must allege substantively in their plaint that which must be a distinct breach of trust, whatever construction may be put upon it, to entitle them to a decree.

9. As Lord Cottenham said in the Attorney-General v. The Mayor of Norwich (2 My. & Cr. 423): "So strongly was it felt, indeed, that there might be cases in which the corporation would be justified in making these payments, that Sir William Follett, in his reply, was driven to use this argument, that if any particular, circumstances did exist, it was for the defendants, in their own justification to state and explain them in their answer, and that it was sufficient for the relator to make a prima facie case. That is contrary, however, to the known and established rules of pleading. It is for the plaintiff to allege the grievance of which he complains; and if he does not in his record sufficiently allege it, the defendant is not called upon to answer at all. If the case, as stated in the record, brings before the Court allegations on which two constructions may be fairly put, one consistent with the innocence of the defendant, and the other implying a breach of trust on his part, it is contrary to all the rules of pleading to presume, that that is wrong which the plaintiff has not thought proper to allege as wrong, by not setting forth those circumstances which are necessary to make it so. "

10. We observe that in this case the defendant, by his written statement, has expressed his readiness to account; but we think that, in a case like the present, the

plaintiffs are not entitled to pick out passages from the defendant''s written statement to supplement the weakness of the case made by themselves. And as in our opinion the plaintiffs have failed to allege a sufficient case for the interference of the Court, we must affirm the decision of the Court below, and dismiss the appeal with costs. But we do so without prejudice to the institution of any properly constituted suit against the defendant, leave to institute which we reserve, if it is necessary to do so.