

**Raj Sing Nahar and ors. Vs. Keshari Sing Nahar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/1143421](http://sooperkanoon.com/1143421)

**Court :** Kolkata

**Decided On :** Jun-03-2014

**Judge :** I. P. Mukerji

**Appellant :** Raj Sing Nahar and ors.

**Respondent :** Keshari Sing Nahar and ors.

**Judgement :**

ORDER

SHEET G.A.No.1115 of 2014 C.S.No.1377 of 1940 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE RAJ SING NAHAR & ORS.Versus KESHARI SING NAHAR & ORS.BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date : 3rd June, 2014.

For Plaintiffs/Petitioners : Ms.Madhu Priya with Mr.D.Sharma, Adversus For Defendants/Respondents : Mr.Subrata Ray, Adv.This is an application in a very old suit of 1940.

It is made, further to the liberty granted to make such an application, by an order of this Court dated 23rd April, 1942.

The subject matter of this application concerns the Nahar family and more particularly, the Deed of Trust dated 19th January, 1918 executed by Sree Rai Setab Chand Nahar Bahadur.

Amongst others things, this Deed of Trust provided that the eldest male lineal descendant of the settlor would be the trustee.

I was shown an order of this Court of 23rd April, 1942 appointing Keshari Sing Nahar as the trustee.

It inter alia provided for a Board of Control to act on the death, retirement, resignation, refusal or incapacity of the trustee.

It also provides that so long as the incoming trustee does not accept office the remaining members of the Board would continue to administer the trust.

Now, pursuant to the liberty to apply provided in that order, this Court was approached in 1998 [GA No.2063 of 1998].and by an order made on an application on 19th June, 1998 Mr.Nirmal Sing Nahar was appointed as the trustee.

He died in 2012.

On his death, the eldest male members of the Nahar family were Inderjit Sing Nahar, Noren Sing Nahar and Ratan Sing Nahar.

By their respective letters dated 10th November, 2012 and 22nd January, 2013 Inderjit Sing Nahar and Noren Sing Nahar expressed their inability to accept the trusteeship.

Therefore, Ratan Sing Nahar, the applicant was the eldest male member of the Nahar family available to accept the trusteeship.

On 3rd March, 2013 a meeting of all the male members of the family was held.

Minutes were drawn up, resolutions were taken.

It appears that unanimously, the applicant Ratan Sing Nahar was declared to be the trustee in terms of the said Trust Deed and the said order of this Court.

The applicant is now about 88 years of age.

On the ground of health he did not take up the trusteeship, which he recorded in his letter dated 12th April, 2013 to the Board of Control.

But he had a change of mind and on 23rd December, 2013 wrote back to the same Board saying that he accepted the trust.

Ms.Madhupriya, learned advocate appearing for the applicant submits that on this evidence I should declare the applicant to be the trustee and direct him to assume charge of the trust.

Mr.Subrata Roy, learned advocate appearing for the defendants submits that the applicant is much advanced in age and should not be appointed as a trustee.

He shows me a letter of Noren Sing Nahar dated 22nd January, 2013 levelling some allegations against the applicant, inter alia relating to occupying an area in excess of what he was authorised to do.

Furthermore, he has violated orders of this Court in this behalf, it was submitted.

Thirdly, he submits that having renounced the trusteeship the applicant cannot claim the same back.

All the points are without merit, in my opinion.

Well after the letter dated 22nd January, 2013, on 3rd March, 2013 a meeting of the male family members was held.

In that meeting the applicant was unanimously declared as the trustee and the resignation of Inderjit Sing Nahar and Noren Sing Nahar accepted.

In my opinion, there is no provision in the Deed of Trust or in the said order of this court dated 23rd April, 1942 for removal of a trustee by the family.

A trustee is discharged by death, resignation, incapacity etc.and is automatically replaced by the eldest lineal male descendent of the settlor.

If any steps are to be taken against the trustee, it is to be taken in accordance with law by a properly constituted proceeding.

This is not such a proceeding taken out by any member of the Nahar family.

With regard to the third objection, the said order of 1942 provides that in the interim period between discharge of a trustee and assumption of office by his successor, the Board of Control would take charge.

Even if it is assumed that the applicant did not immediately take up the trusteeship, the next senior male member of the family did not assume charge as trustee.

The said provision in the Deed of Trust, in my opinion, gives time to an incumbent to assume office.

Since no member of the family assumed office in his place and stead, the applicant had the opportunity to withdraw his resignation, which he did.

Having done so, I am of the opinion that he has taken charge of the trust and that the Board of Control ceased to act from that point of time.

All the relevant papers are before me.

Affidavits are not invited.

This application is disposed of by declaring the applicant as the trustee and directing him to discharge his duties as such.

He should be careful that there is no noncompliance with any existing order of this Court.

(I.P.MUKERJI, J.) K.

Banerjee & P.K.Das A.Rs.[C.R.].

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