

Maninder Singh Maker and Ors vs.ajit Singh Maker and Ors

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Court : Delhi

Decided On : Feb-01-2019

Appellant : Maninder Singh Maker and Ors

Respondent : Ajit Singh Maker and Ors

Judgement :

\$~ * + + IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

7. h December, 2018 Date of decision :

1. t February, 2019 CS (OS) 3121/2011 & I.A. 8178/2017 SUJAN MOHINDER CHARITABLE TRUST AND ANOTHER Plaintiffs Through: Mr. Abhimanyu Bhandari, Mr. Tanmaya Mehta, Mr. Prashant Mehta, Ms. Nattasha Garg, Mr. Alok Tripathi, Mr. Harsh Kumar and Ms. Aashima Advocates. (M:9654998650) Singhal, versus MOHINDER KAUR AND OTHERS Defendants Through: Mr. Sandeep Mittal and Mr. Sudarshan Rajan, Advocates for D-1, 2 & 4 to 8. (M:9810005698) AND CS(OS) 558/2014 MANINDER SINGH MAKER AND ORS Plaintiffs Through: Mrs. Kajal Chandra, Mrs. Purna Chopra and Mr. Viren Kapur, Advocates for P-1. (M:9810133536) Mr. Abhimanyu Bhandari, Mr. Tanmaya Mehta, Mr. Prashant Mehta, Ms. Nattasha Garg, Mr. Alok Tripathi, Mr. Harsh Kumar and Ms. Aashima Singhal, Advocates. versus AJIT SINGH MAKER AND ORS Defendants Through: Mr. Sandeep Mittal and Mr. Sudarshan Ranjan, Advocates for D- 1, 2 & 4 to 8. (M:9810005698) Mr. Ripu Diman Bhardwaj, CGSC with Mr. T.P. Singh, Advocate. (M:9971529687) CS(OS) 3121/2011 & 558/2014

JUDGMENT I.A.3268/2018 (u/O XII Rule 6 CPC), I.A.7332/2018, I.A.10999/2018, I.A.4962/2015, I.A.6069/2018, & I.A.6862/2018 in CS(OS) 558/2014

1. The disputes in the present proceedings filed under Section 92 CPC relate to the Sujan Mohinder Charitable Trust which is a registered charitable trust created by Trust Deed dated 6th March, 1978. It was founded by late Shri Sardar Sujan Singh. The purpose of this Trust as per the Trust deed are as under: -

3. The objects of the Trust shall be :

(a) To render financial help to any educational, medical, religious or charitable organization. (b) To render financial help to institution for poor and disabled persons. (c) To provide for payment of scholarships to students. (d) To provide for payment of school or college fees, Boarding and/or lodging charges and purchase of educational books or stationery for poor students. (e) to provide general medical relief by subscribing to or establishing if funds so permit, charitable dispensaries hospitals, clinics or to give medical relief to poor. (f) to give monetary aid or otherwise provide relief for flood or famine or by any other natural calamities like earthquake and cyclones; (g) to provide for education and/or maintenance of poor widows. (h) to open orphanage homes or assist in the conduct of any institutions for protection of orphanage. CS(OS) 3121/2011 & 558/2014

Page 2 of 37 (i) to provide for construction of buildings for the accommodation of and conduct schools, colleges, research institutions, Medical clinics and Dispensaries. (j) to feed poor and disabled persons or for maintenance of bagger homes or institutions for baggers and disabled persons. (k) For removal of doubts, it is hereby declared that the funds of the Trust should not be utilized for any purpose other than objects of the Trust or for the benefit of author of the Trust or any persons who has made a substantial contribution to the Trust.

2. The initial trustees of the Trust were: -

(i) Sujan Singh S/o S. Bhagwan Singh, 8-Eastern Avenue, Maharani Bagh, New Delhi. (ii) Smt. Mohinder Kaur wife of S. Sujan Singh, 8-Eastern Avenue, Maharani Bagh, New Delhi. (iii) S. Joginder Singh Maker son of S. Sujan Singh, 51/2, D.B. Gupta Road, Karol Bagh, New Delhi. (iv) Shri Prithipaul Singh son of S. Sujan Singh, 51/2, D.B. Gupta Road, Karol Bagh, New Delhi (v) Shri Amarjit Singh son of S. Sujan Singh, 51/2, D.B. Gupta Road, Karol Bagh, New Delhi (vi) S. Raghbir Singh, son of Shri Gopianand, Managing Director Tara Hotel, Kashmiri Gate, Delhi. (vii) Sh. Harbans Singh, son of S. Dayal

Singh, 29-Rohtak Road, New Delhi.

3. Out of the above trustees, Shri Sujan Singh passed away on 1st July, 2009. Shri Harbans Singh and Shri Raghbir Singh also expired. Upon the CS(OS) 3121/2011 & 558/2014 Page 3 of 37 demise of Shri Sujan Singh on 1st July, 2009, resignations were submitted by all the three sons, who were trustees in the trust.

4. The manner in which, the constitution of the trust changed, after the demise of Shri Sujan Singh, will be set out later. The trust deed had a specific clause to the following effect: - (b) 5.(a) The trustees shall hold office during their life unless they vacate the office earlier. S. Sujan Singh shall be the Managing Trustee during his life time and not liable to be removed from such office except for breach of trust or misconduct; In the event of any vacancy arising in the office of the Managing Trustees by the death, resignation or otherwise the next senior most Trustees shall act as the Managing Trustee, the seniority in respect of the Trustees herein being reckoned in the order in which the name of the Trustees are mentioned in the deed.

6. In the case of any vacancy in the Trust Board arising by death or resignation or otherwise, the remaining Trustees will have full powers to represent the Trust Board. The Managing Trustees shall have, in such an event, power to accept a Trustee to fill up the vacancy. 5. As per clause 9, the managing trustee was to manage the day-to-day affairs of the trust. The powers of the trustees were contained in clause 10 of the deed. The trustees could also frame rules for the management of the trust. However, none of the rules could be repugnant to the objectives of the trust.

6. The trust was allotted property bearing No.NH-1, New Friends Colony, New Delhi admeasuring 1332 square meters (hereinafter, suit CS(OS) 3121/2011 & 558/2014 Page 4 of 37 property). It contained a constructed building comprising of the basement, ground floor, first floor and the second floor. The ground floor is utilized for the purposes of running the Sujan Mohinder Hospital and the first and the second floors were under tenancy. In April, 2007, a conveyance deed was executed by the DDA in favour of the trust during the lifetime of Shri Sujan Singh.

7. Upon the demise of Shri Sujan Singh, his wife Smt. Mohinder Kaur and the three sons remained as trustees. The sons tendered their resignations on 15/16th July, 2009 and in the meeting held on 18th July, 2009, Smt. Mohinder Singh wife of Shri Pritpal Singh, as also Smt. Jupinder Kaur Maker, wife of Shri Ajit Singh Maker were inducted as trustees. Thus, the trust was reconstituted with the following trustees: - (i) Smt. Mohinder Kaur, wife of Shri Sujan Singh (ii) Smt. Mohinder Singh, wife of Pritpal Singh (iii) Smt. Jupinder Kaur, wife of Shri Ajit Singh Maker Smt. Mohinder Kaur was made the managing trustee and looked after the day-to-day affairs of the trust. Both the daughters-in-law, who were made trustees, lived in the United Kingdom.

8. Sometime in December, 2011, it is stated that Smt. Mohinder Singh acquired knowledge of the suit property having been transferred. Upon inquiries, it was revealed that a sale deed had been executed, purportedly on behalf of the trust in favour of one of the trustees i.e. Smt. Jupinder Kaur Maker for a sale consideration of Rs.19,20,00,000/-. Upon acquiring knowledge of this transaction, CS(OS) 3121/2011 came to be filed. The relief prayed for in the said suit is as under: - CS(OS) 3121/2011 & 558/2014 Page 5 of 37 a) Pass a decree of declaration to the effect that the sale deed dated 18th July, 2011 executed in the name of Plaintiff No.1 in favour of Defendant No.2 in respect of the property known as plot No.NH-1, measuring approx. 1332.11 sq. meters, situated in the layout plan of Community Centre Friends Colony, known as new Friends Colony, New Delhi, registered with the office of Sub-Registrar V, New Delhi, at Registration No.11278 in Book No.1, Volume No.11320 on pages 189 to 198 on 20.07.2011 be declared null, void and ultra vires the terms of the Trust Deed dated 06th March 1978; b) c) d) from selling, Pass a decree of permanent injunction in favour of the Plaintiffs and against the Defendant No.2, thereby restraining the Defendant No.2, her legal heirs, representatives, agents, successors, attorneys and/or any other person claiming through her transferring or otherwise creating any third party interest or encumbrance or parting with the possession of the property known as plot No.NH-1, measuring approx.. 1332.11 sq. meters, situated in the layout plan of Community Centre Friends Colony, known as New Friends Colony, New Delhi, to any person other than to Plaintiff No.1; Direct Defendant Nos.2 and 3 to deposit the amount of Rs.19,20,00,000/-, which was the consideration allegedly paid by the Defendant

No.2 to Plaintiff No.1 with the Registry of this Honble Court; Award cost of the Suit to the Plaintiffs. This suit was filed on behalf of the trust as also Smt. Mohinder Singh.

9. The Defendants took a preliminary objection as to the maintainability of the suit in view of Section 92 CPC. On 31st January, 2012, Smt. Jupinder CS(OS) 3121/2011 & 558/2014 Page 6 of 37 Kaur Maker was restrained from alienating, transferring or creating any third party rights in respect of the suit property. In view of the objections taken by the Defendants, during the pendency of CS(OS) 3121/2011, CS(OS) 558/2014 came to be filed under Section 92 CPC.

10. In CS(OS) 558/2014, the same allegations in respect of the suit property being transferred illegally to Smt. Jupinder Kaur Maker, were made. The suit was preferred by Shri Maninder Singh - son of Shri Joginder Singh, Shri Pritpal Singh - son of Shri Sujjan Singh, Shri Karan Singh - son of Shri Pritpal Singh and Smt. Mohinder Singh - wife of Shri Pritpal Singh, along with one other person who was using the hospital, on the ground that they are affected persons. The prayers in the said suit are as under: a) Pass an order of permanent injunction restraining the Defendants from disposing / transferring / alienating / creating any third party interests in any manner or in any dealing with the property situated at NH-1 Community Centre, Friends Colony, New Delhi-110065; and b) Pass an order of Mandatory Injunction against the Defendants 1 and 2 for rendition of accounts in respect of deposit of Rs.19.20 crores allegedly paid by Defendant No.2 towards sale proceeds for the Trust Property situated at NH-1 Community Centre, Friends Colony, New Delhi-110065; and c) Pass a decree of declaration that the induction of Trustees of Defendants 1-2 and 4-6 as Trustees was illegal, null and void; and d) Pass a decree of mandatory injunction directing the removal of Defendants 1-2 and 4-6 from the Board of Trustees of Defendant No.8; and e) Pass a decree of declaration that all the acts / deeds done by the Defendants including all the meetings convened resolutions passed, decisions taken, follow up actions taken, expenditure incurred etc. relating to the Trust property situated at NH-1 CS(OS) 3121/2011 & 558/2014 Page 7 of 37 f) Community Centre, Friends Colony, New Delhi- 110065, are illegal, null and void and contrary to the terms of Trust Deed; and Pass an order declaring Plaintiff No.2, Plaintiff No.5, and Plaintiff No.1

(representing his father Joginder Singh since incapacitated) as the only legal Trustees of the Defendant No.8 Trust; and g) Pass a decree of declaration to the effect that in terms of the Trust Deed, the Plaintiff No.2 being eldest son of the Settler Late Sh. S. Sujan Singh, is to be the Managing Trustee and Plaintiff No.5 and Plaintiff No.1 Maninder Singh (S/o third brother Joginder Singh, since the Trustees; and. incapacitated) as i) h) Pass a declaration to the effect that the Rules purportedly passed and adopted on 22.01.2010 are null and void and not binding on the Defendant No.8 Trust and, further that any act or decision taken by the Defendants in pursuance thereto particularly in the resolution removing Plaintiff No.5 as a Trustee is illegal and non est; and Pass a decree of declaration that the Sale Deed dated 18.07.2011 pertaining to Trust property situated NH-1, Community Centre, Friends Colony, New Delhi-110065, executed by Defendant No.1 in favour of Defendant No.2 (his wife) is null, void and non est; and Any other relief / order that this Honble Court may deem fit and proper in facts and circumstances of the case. j) Both the suits were heard together from time to time since 2014.

11. On 5th August, 2014, leave was granted to file the suit under Section 92 CPC. The findings of the Court at the time of granting leave are relevant and are set out herein below: - 5. I have gone through the copy of the Trust Deed placed on the record. A notice of the suit for CS(OS) 3121/2011 & 558/2014 Page 8 of 37 learned senior counsel permission to sue under Section 92 CPC was also served upon the Defendants.

6. Mr. Ravi Gupta, for Defendants No.1, 2 & 8 has submitted that the suit is not maintainable because of its reliefs being in the nature of personal to the Plaintiffs.

7. A perusal of the Trust Deed shows that it never authorised any trustee to sell the property of the trust. Thus, leave under Section 92 CPC is granted to file the suit. 12. On 5th August, 2014, in the application seeking interim relief, the Court further observed as under: - 4. Since a Sale Deed has been executed by Defendant No.1 in favour of Defendant No.5, which prima facie appears to be not permissible, Defendant No.1 to 6 are restrained from creating any third party interest in the property.

5. The Plaintiffs have prayed for deposit of Rs.19.20 crores in the Court. Since the execution of the Sale Deed has been challenged by the Plaintiffs, Defendant No.1 will decide whether to keep this amount in fixed deposit receipt (FDR) and shall not raise any plea that this amount has been spent on the activities of the trust.

13. The appeal against grant of leave to institute the suit under Section 92, came to be dismissed on 23rd December, 2015 in FAO(OS) 711/2015. In the meantime, suit CS(OS) 3121/2011 was transferred to the District Court and on an amendment made in the plaint therein, the pecuniary value was enhanced to Rs.2.2 crores and the suit was re-transferred to the High Court. On 9th September, 2016, an interim order restraining creation of third party interest, in respect of the suit property, was made absolute in CS(OS) CS(OS) 3121/2011 & 558/2014 Page 9 of 37 558/2016. Applications were moved by the Plaintiffs seeking deposit of the sum of Rs.19.2 crores. On 21st April, 2017, both the I.As. seeking deposit of the amount were disposed of with the following observations: - IA No.13224/2016 and IA No.23822/2014 These are two applications filed by the plaintiff seeking implementation of the directions given by this Court in its order dated 05.08.2014 and subsequent order dated 09.09.2016. Reply has been filed by the defendant to both the aforementioned applications. In reply to IA No.23822/2014 it is reiterated that the amount of Rs.19.2 crores (as reflected in the order dated 05.08.2014 as also in the order dated 09.09.2016) is secured. This statement is also reiterated by the learned counsel for the defendant who has instructions from his client. It is lying in an account of defendant No.1/defendant no.2. Learned counsel for defendant No.1 is not sure whether this amount is lying in savings bank account or current account of the defendant. Submission is however reiterated that this amount is lying secured and this amount will always remain alive during the pendency of the suit and will be not spent in the activities of the Trust. This Court is of the view that to further advance the import of the order dated 05.08.2014 and 09.09.2016 defendant no.1/defendant no.2 shall place on record the details on an affidavit of defendant no.1/defendant no.2 as to where this amount is kept/secured. Both applications are disposed of.

14. Thus, a clear representation was made before this Court that the amount of Rs.19.2 crores is lying secured in the accounts of Shri Ajit Singh Maker and Smt.

Jupinder Kaur Maker. On 7th September, 2017, since no details were forthcoming as to the accounts in which the said amounts were lying secured and no instructions were given to the counsels, the personal CS(OS) 3121/2011 & 558/2014 Page 10 of 37 presence of Shri Ajit Singh Maker was directed. On 19th September, 2017, it was submitted on behalf of Shri Ajit Singh Maker that he does not have assets worth Rs.19.2 crores. It was directed that he would not leave the country till the next date. On 26th September, 2017, various undertakings were recorded in the following terms: - 12. Learned senior counsels appearing for Mr. Ajit Singh Maker and Mrs. Jupinder Kaur, under instructions from Mr. Ajit Singh Maker and Mrs. Jupinder Kaur, respectively, who are present in Court, undertake: (i) that Mrs. Jupinder Kaur shall not sell, alienate, transfer, encumber or create any third party rights in the property known as Plot No.NH-I, measuring 1332.11 sq. meters situated in the layout plan of Community Centre, Friends Colony, now known as New Friends Colony during the pendency of the suit; (ii) in case the plaintiffs succeeds and the Sale Deed is declared to be null and void and the said property shall be reverted to the Trust and Mrs. Jupinder Kaur shall not stake a claim or seek refund of the said amount of Rs. 19.2 crores from the Trust or the other Trustees (other than Mr. Ajit Singh Maker); (iii) in case the Sale Deed is upheld and the sale is held to be valid then Mr. Ajit Singh Maker shall deposit the said amount of Rs.19.2 crores in the Trust account, alongwith such interest and within such period as the court may direct; (iv) in case Mr. Ajit Singh Maker, fails to deposit the said amount, within the stipulated period, Mrs. Jupinder Kaur shall deposit the said amount of Rs.19.2 crores (alongwith interest as directed) in the Trust account within the such period as may CS(OS) 3121/2011 & 558/2014 Page 11 of 37 be stipulated by the Court; till such time the deposit is made in the trust account, the said amount of Rs.19.2 Crores (alongwith interest as directed), shall be a charge on the subject property and would be recoverable from the sale, alienation, transfer of the said property. (v)

15. The said undertakings were accepted as an interim measure and affidavits were directed to be filed.

16. Affidavits of Shri Ajit Singh Maker and Smt. Jupinder Kaur Maker were to be filed, subject to which the order restraining Shri Ajit Singh Maker, from travelling

outside the country, would be vacated. On 20th November, 2017, this Court passed a detailed order in respect of securing the amount of Rs.19.2 crores. The Court found that the trust deed never empowered anyone to sell the property of the trust. The findings of the Court are as under: - Admittedly, the object of the trust never gave 9. any power to sell the property. The original trust deed dated 06.03.1978 notes the powers of the trust and nowhere it gives any right to dispose of the property in any manner. What appears from the record is by a meeting dated 26.01.2010, the defendants reframed the rules and regulations of the trust giving more powers to the trustees including the power to sell its property. The new trust deed was prepared and was got registered on 09.02.2010; clause No.9 of the amended trust deed empowered the trust that a simple majority would require to purchase / sell any immovable property of the trust, though initially the trustees did not had any such power to amend the rules giving them power to sell immovable property of the trust. In fact, the trust deed dated 06.03.1978 though gave power to CS(OS) 3121/2011 & 558/2014 Page 12 of 37 trustee in the trustees to frame rules but such power was only limited to the conduct and management of the trust. Clause No.9 of the original trust deed specifically notes the trust shall be managed by the managing trustees and shall have the powers of day to day management and administration of the trust. Thus enjoining themselves with the power to 10. dispose of the property of the trust and then to sell it by its managing favour of his wife on 18.07.2011 for a petty sum of 19.2 crores when undisputedly such property was earning an annual rental of 2.00 crores and without any imminent need of funds in the trust, prima facie appears to be suspicions. Moreso, the amount of 19.2 Crores till now have not seen the light of the day. The bank statements have not been filed as yet and rather the defendants are making contrary statements qua the status of such amount. No doubt the defendants shall be bound by 11. undertakings given, but considering the overall scenario, especially in a situation where if the sale deed is held to be valid, then who shall deposit the amount of 19.2 Crores with the trust is not answered as yet by defendant No.1. Rather the defendant No.1 claims to have donated the entire money.

12. Hence considering the manner in which rules were amended to the benefit of the trustees; the way the property was hurriedly disposed of without any cogent

reason or the defendant no.1 is not disclosing the exact location of such amount and rather is making contradictory statements every now and then, it would be appropriate in the facts of the case if the amount of 19.2 Crores be deposited by the defendant No.1 in court (as has admitted such amount is lying in his account per orders dated 05.08.2014 and 09.09.2016) or alternatively the defendant No.1 shall furnish the bank imminent need, and considering CS(OS) 3121/2011 & 558/2014 Page 13 of 37 guarantee to the extent of 19.2 Crores with the Registrar General of this Court within four weeks from today. 17. An appeal was filed against this order being FAO(S) 320/2017 which was withdrawn on 18th December, 2017. Modification of the order dated 20th November, 2017 was sought before this Court. The applications seeking modification were dismissed on 6th February, 2018. The order dated 20th November, 2017 was not complied with. Repeated orders were passed directing the Defendants to file their list of assets which was also not done. On 3rd May, 2018, Shri Ajit Singh Maker was directed to be present in Court. On 25th May, 2018, it was submitted that an affidavit in compliance of the order dated 17th May, 2018 is ready. However, none was filed. CCP(O) 45/2018 came to be preferred. On 20th July, 2018, the Court informed that bailable warrants have already been issued against the Defendant No.1, Shri Ajit Singh Maker. The Court also issued notice to the Standing Counsel, Ministry of External Affairs. On 29th August, 2018, a Local Commissioner was appointed to ascertain the factual situation as to the working of the trust and the possession/position of the property. On 13th September, 2018, Shri Ajit Singh Maker appeared and his statement was recorded. On 3rd October, 2018, the original title deeds of the property were produced and the same were directed to be retained in the custody of Deputy Registrar (Original). The bank statements of the trust were also produced for the period from 1st July, 2009. On 1st November, 2018, Shri Ajit Singh Maker made a submission that he does not have the funds to deposit the money, however, he is willing to offer a property in Mangalore as a security. On 7th December, 2018, it was brought to the notice of the Court that vide CS(OS) 3121/2011 & 558/2014 Page 14 of 37 order dated 27th November, 2018, the learned Division Bench has dismissed the appeal challenging the order dated 20th November, 2017 and 6th February, 2018. On 7th December, 2018, the undertaking of Shri Ajit Singh Maker not to leave the country without the prior

permission of this Court was also accepted and arguments were heard on all the I.As.

18. The crux of the proceedings till date in both the suits for declaration as also the suit under Section 92 are: - (i) The order directing deposit of Rs.19.2 crores has still not complied with; (ii) The said order dated 20th November, 2017 continues to operate. Shri Ajit Singh Maker and Smt. Jupinder Kaur Maker continue to be in violation of the orders of this Court. The trust is being currently managed by Shri Ajit Singh Maker, his wife and persons appointed on their behalf. (iii) All the other trustees, including the sons of late Shri Sujan Singh have been completely ousted of the trust. (iv) Shri Ajit Singh Maker and his wife claimed to have no assets to deposit the sum of Rs.19.2 crores. The sale transaction in favour of Smt. Jupinder Kaur Maker, however, stands admitted. Only one son of Shri Joginder Singh remains as a trustee, however, his role is unclear. CHANGE IN CONSTITUTION OF THE TRUST DEED AND THE IMPUGNED TRANSACTION:-

"19. The original trustees of the trust are set out in the paragraph 2 above. Shri Sujan Singh passed away on 1st July, 2009. During his lifetime, two of the original trustees; Shri Harbans Singh and Shri Raghbir Singh had also CS(OS) 3121/2011 & 558/2014 Page 15 of 37 passed away. On 18th July, 2009, the wife of Shri Pritpal Singh and wife of Shri Ajit Singh Maker were inducted as trustees. Smt. Mohinder Kaur, was the managing trustee. On 5th August, 2009, a resolution was passed by the trust inducting Shri Ajit Singh Maker and the following persons as trustees: 1. Mr. Ajit Singh Maker s/o Late S. Sujan Singh Maker D.O.B:

27. 04.1967 Passport No:

50031. 261 2. Mr. Satpal Singh Maker s/o S. Joginder Singh Maker D.O.B:

27. 04.1967 Passport No:

03948. 844 3. Mr. Kuldeep Singh Kapur s/o Late S. Puran Singh D.O.B:

23. 12.1943 D.L. No: DL-1319940039188 4. Mr. Krishan Kumar Batra s/o Late Sh. Ram Dayal Batra D.O.B:

15. 12.1962 Passport No: E3491654 It is to be noted that in this meeting Smt. Mohinder Singh is not present.

20. On 14th November, 2009, the rules and regulations of the trust were amended. Even in this meeting, Smt. Mohinder Singh was not present.

21. On 22nd January, 2010, the new rules were approved in the absence of Smt. Mohinder Singh. Finally, on 29th January, 2010, without notice to any other trustee, including Smt. Mohinder Singh, the managing trustee Smt. Mohinder Kaur, resigned and Shri Ajit Singh Maker took over as the managing trustee.

22. On 3rd April, 2010, a resolution was passed removing Smt. Mohinder Singh from the trust on the ground that she has not attended the meetings of the trust continuously. The relevant portion of the said minutes are as under: CS(OS) 3121/2011 & 558/2014 Page 16 of 37 3. Absence of Mrs. Mohinder Singh The Board of Trustees have noted that Mrs. Mohinder Singh is not attending meetings continuously nor she had replied to the notices sent to her. The Board has further noted that she is not showing any interest in the running of the Trust. The Board has decided if she does not attend the next meeting, she should be removed from the Board of Trust. The above resolution was adopted and approved by the board of trustees unanimously.

23. With the ouster of Smt. Mohinder Kaur, Shri Ajit Singh Maker and his wife, came in control of the trust. The final trustees who remained were, therefore (i) Shri Ajit Singh Maker (ii) Smt. Mohinder Kaur (iii) Smt. Jupinder Kaur Maker (iv) Shri Kuldeep Singh Kapoor (v) Shri Krishan Kumar Batra (vi) Shri Satpal Singh Maker

24. On 20th October, 2010, in the presence of four trustees and in the absence of the mother and Shri Satpal Singh Maker, a resolution was passed to the following effect: - 3. Selling of property at 1, Community Centre, New Friends colony, New Delhi As per the wishes of Mrs. Mohinder Kaur after the demise of her husband to build a old age home (Bridh Ashram) near Ponta Sahib in Himachal Pradesh, India. It was therefore decided to dispose of the above property and utilize the funds CS(OS) 3121/2011 & 558/2014 Page 17 of 37 for opening the old age people home and to give charity as per the objects of the trust deed. It was further decided that the purchaser should run ground floor and basement as Sujan Mohinder Hospital for needy people as it is

doing currently. 25. This was again reiterated in the presence of Smt. Mohinder Kaur on 22nd December, 2010. The resolution passed on 22nd December, 2010 reads as under: - 3. Selling of Property at 1, Community Centre, New Friends colony, New Delhi with the consent of Mrs. Mohinder Kaur As per the desire and wishes of Mrs. Mohinder Kaur, the board of trustees have unanimously decided to sell the hospital property and build a old age home (Bridh Ashram) near Ponta Sahib, Himachal Pradesh, India and will utilize the funds for opening the old age people home and to give charity as per the objects of the trust deed. The board was informed that so far the response for purchase of the property on the conditions that the buyer will run the hospital under the name of Sujan Mohinder Hospital and the highest offer so far received is upto Rs.19 Crores. The Board of Trustees have decided to meet again in the month of January, 2011 for further consideration of this matter. The above resolution has been adopted and approved by the board of trustees unanimously. 26. Thus, after ousting Shri Pritpal Singh and taking control of the trust, decisions were being taken by the trustees to dispose of the property in CS(OS) 3121/2011 & 558/2014 Page 18 of 37 Friends colony on the ground that an old age home would be built near Ponta Sahib, Himachal Pradesh. The trustees did not end here. On 19th January, 2011, in an extremely curious fashion, a resolution was passed to the following effect :-

"3. Selling of Property at 1, community centre, New Friends colony, New Delhi Resolved that Mrs. Jupinder Maker w/o Mr. Ajit Singh Maker who offered a price for the trust property situated at 1, Community Centre, New Friends Colony, New Delhi amounting (Rupees Nineteen Crores Rs.19,20,00,000/- Twenty Lacs only) which is more than the fair market price. She also agreed to run the hospital as Sujan Mohinder Hospital only for ever as long as she lives and assure to improve the facilities to operate the hospital as being run currently. The Board was moved with her kind gesture keeping the founder Sujan Singh Makers ideals alive. It is further resolved that the Board of Trustees agreed to her offer and unanimously decided to sell the property to Mrs. Jupinder Maker (Trustee) at Rs.19,20,00,000/- (Rupees Nineteen Crores Twenty Lacs only). The Board decided to enter into an Agreement to Sell. The above resolution has been adopted and approved by the board of trustees unanimously. 27. The above Minutes record that a decision has been taken to sell the property to Smt. Jupinder Kaur Maker who was one of the

Trustees and the daughter in law of Shri. Sujan Singh for a sum of Rs. 19.2 crores. Pursuant to this resolution, an Agreement to Sell dated 24th January, 2011 CS(OS) 3121/2011 & 558/2014 Page 19 of 37 came to be executed, selling the suit property to Smt. Jupinder Kaur Maker. On 23rd May, 2011, a resolution was passed that the property ought to get registered in the name of Smt. Jupinder Kaur Maker. On 6th July, 2011, Shri Ajit Singh Maker delegated his powers to one of the other trustees, Shri Krishan Kumar Batra, and finally, a sale deed was entered into, transferring the property of the trust under signatures of Shri Krishan Kumar Batra to one of the other trustees, i.e., Smt. Jupinder Kaur Maker for a sale consideration of Rs.19.2 crores. On 24th October, 2011, the minutes of the trust records as under: - 3. Sale of the Property on dated 18th July, 2011 The Board of Trustees were informed that the property has been sold to Mrs. Jupinder Maker at the agreed price of Rs.19,20,00,000/- (Rupees Nineteen Crores Twenty Lacs only) and the Board of Trustees were further informed that the full amount of Rs.19,20,00,000/- (Rupees Nineteen Crores Twenty Lacs only) from Mrs. Jupinder Maker towards the sale of property has been received. Mrs. Jupinder Maker further confirmed that she would devote her best efforts to run the Sujan Mohinder Hospital and will improve the facilities available for running the hospital. She also expressed her desire to the Board of Trustees to help her in running the hospital in its present form. The above resolution has been adopted and approved by the board of trustees unanimously. 28. Thus, Shri Ajit Singh Maker sold the property of the Trust to his wife Smt. Jupinder Maker, in this fashion. The consideration of Rs.19.2 crores is CS(OS) 3121/2011 & 558/2014 Page 20 of 37 confirmed in the Minutes, to have been received in the trust. The above said minutes and the sale transaction in favour of Smt. Jupinder Kaur Maker are impugned in both these proceedings. STAND OF SHRI PRITPAL SINGH AND SMT. MOHINDER SINGH²⁹ It is argued on behalf of the Plaintiffs, who represent the interest of Shri Pritpal Singh and Smt. Mohinder Singh, that the amendment to the rules and regulations of the trust are completely illegal. The new rules sought to change the powers of the trust. Such powers being repugnant to the original objectives of the trust itself, the trustees have no authority to adopt these new rules. It is submitted on their behalf that the original trust deed is clear that the trustees did not have any power to sell any property belonging to the trust. As per the objective No.(xv),

the trust could only let out, but not sell, immovable property belonging to it. In the new rules, however, powers were being vested in the trust to execute a sale deed and also sell any immovable property of the trust. It is their submission that these new rules are ultra vires the main trust deed and are repugnant to the objects of the trust. Since the sale transaction was entered into pursuant to the rules which are per se illegal, the transaction ought to be declared as null and void. It is further submitted on behalf of the Plaintiffs that the trust being charitable in nature, the trustees have acted against the object of the trust and ought not to be permitted to continue as trustees. SUBMISSIONS OF SHRI AJIT SINGH MAKER AND SMT. JUPINDER KAUR MAKER³⁰ It is submitted on behalf of the Defendants that the Plaintiffs have no locus standi to institute the suit. A memorandum of family settlement dated 2nd November, 2011 is relied upon to submit that the Plaintiffs are belonging CS(OS) 3121/2011 & 558/2014 Page 21 of 37 to the family and all the monies have already been paid to them and hence the Plaintiffs cannot seek any reliefs qua any of the properties. It is further submitted that the sale transaction was as per the wish of Smt. Mohinder Kaur, who had disposed of the property during her lifetime and all the monies received in the trust were also utilized by her in the manner as she pleased.

31. It is further submitted that a total sum of Rs.26,00,07,000/- was donated to various registered charitable trusts/societies during the period from 1st July, 2009 to 31st March, 2014. This amount included the amount of Rs.19.2 crores paid by Mrs. Jupinder Kaur Maker, as consideration for purchase of the trust property. They relied upon a certificate of Chartered Accountants, M/s. Bodas & Associates in support of this stand. REPORT OF THE LOCAL COMMISSIONER³² While arguments were being heard on the various applications, a Local Commissioner was appointed on 29th August, 2018, to report on the following aspects: - i) As to who is in possession of the property i.e. with whom are the keys of the property?. ii) Whether any hospital is running in the property?. iii) Whether the records of the trust are in the property?. iv) Who controls the bank accounts of the trust?. v) In which bank, are the bank accounts of the trust operated and what are the balances in the same?. vi) Are there any other assets of the trust, if so details thereof. It was further directed that any records relating to the including, books of accounts and electronic account copies shall be taken into custody and be

presented to this Court on the next trust CS(OS) 3121/2011 & 558/2014 Page 22 of 37 date of hearing. 33. The Local Commission was executed on 4th September, 2018. The report of the Local Commissioner reveals the status of the property as under:-

"(i) The physical possession of the property is in the control of Shri Ajit Singh Maker and Smt. Jupinder Kaur Maker. The staff employed by them was present in the premises. The ground floor was totally vacant. The first and the second floor was locked. In the first floor, Yes Bank was a tenant. The terrace was locked but the keys were not available. (ii) Two cars of Smt. Jupinder Kaur Maker were present in the premises. (iii) There was no hospital running. There were no patients and the pharmacy was closed. The hospital had only two doctors; one Eye Physician who visited three times a week and a Surgeon who worked on commission basis. Patients were only seen from 10.30 a.m. to 1.30 p.m. There was a provision of an operation theatre, though the same was locked and no keys were available. (iv) Only out patient facility for a limited time in a day was being provided. (v) At best, it appears to be an eye clinic. (vi) Two persons i.e. a supervisor and a hospital accountant were present. One of them only maintained accounts of the hospital. Income tax return of the trust was filed only till 2011. Shri Krishan Kumar Batra, one of the trustees, appeared to be in CS(OS) 3121/2011 & 558/2014 Page 23 of 37 control. However, he was not present. Some accounts related documents were found by the Local Commissioner which were inventoried and put in separate cartons. (vii) The hospital had bank accounts in Yes Bank, Bank of India and Canara Bank. The Canara Bank account had three signatories; Shri Ajit Singh Maker, Smt. Jupinder Kaur Maker and Smt. Seema Rani, an employee. Each of them had authority to sign individually. (viii) The assets of the trust could not be ascertained by the Local Commissioner as no records were provided.

34. The report of the Local Commissioner shows that most of the building is not in use. Along with the Local Commissioners report, a statement of payments made by Smt. Jupinder Kaur Maker to the trust has been set out which shows the following payments: -

Date	24-01-2011	22-07-2011	12-09-2011	12-09-2011	12-09-2011
Total Amount	1,00,000.00	96,00,000.00	6,23,00,000.00	6,00,00,000.00	

6,00,00,000.00 19,20,00,000.00 Remarks In Cash By Cheque By Cheque By Cheque By Cheque 35. Bank statements showing the said payments have also been attached. These documents appear to have been handed over to the Local Commissioner by the staff, who were present at the time of the execution of the commission. A prima facie perusal of the Bank Statements shows that the amount of Rs. 19.2 crores was credited to the accounts of the Trust vide four entries i.e., one entry on 22nd July, 2011 for Rs. 96 lakhs and three CS(OS) 3121/2011 & 558/2014 Page 24 of 37 entries on 12th September, 2011 for Rs. 6.23 crores, Rs.6.00 crores and Rs.6.00 crores. However, within a couple of months, i.e., between 15th October, 2011 to 28th November 2011, the entire amount is taken out of the bank account of the Trust through various transactions leaving the balance on 6th September 2018 as Rs. 19,439/-. How, and in what manner and in whose names were the amounts withdrawn or paid, is not clear from the said Statements. ANALYSIS AND FINDINGS36 The factual scenario presented above shows an unacceptable state of affairs in the Trust. Various applications are filed seeking a decree of the suit, dismissal of the suit. A perusal of the trust deed of Sujjan Mohinder Charitable Trust shows that it was conceived purely for charitable purposes. The objects of the trust did not include any benefits to the family. The trust deed clearly contemplated that in the event of the managing trustees death, the next senior most trustee was to act as the managing trustee. The seniority was to be reckoned in the order in which the names of the trustees appeared in the trust deed as per clause 5(b). In case of a vacancy arising, the managing trustee had the power to appoint a trustee to fill up the vacancy. The day-to-day management of the trust vested in the managing trustee. The powers of the trust did not provide for sale of immovable property. Clause 11 of the Trust Deed is categorical and reads as under: - 11. It is declared and understood that it shall be lawful for the Trustees to resolve and frame the rules for the conduct and management of the Trust and such resolutions and rules framed, amended, altered or substituted shall have the same force as if they have been incorporated in the original Trust hereby created but not CS(OS) 3121/2011 & 558/2014 Page 25 of 37 repugnant to the objects of the Trust. 37. As per the above clause, the trustees could only frame rules for the conduct and management of the trust. However, the said rules could not be repugnant to the objects of the trust. Sale of

immovable property belonging to the trust is not contemplated in the trust deed. The original trustees, during their lifetime clearly intended to run charitable hospitals as one of the main objectives of the trust. In this backdrop, the question that arises is as to what are the powers of the Court in the case of such a trust.

38. The first question to be determined is the nature of the Trust. The distinction between a private and a public trust was considered by the Supreme Court in *Deoki Nandan v. Murlidhar and Others* AIR (1956) SC133 wherein the Court observed as under trust is 5. It will be convenient first to consider the principles of law applicable to a determination of the question whether an endowment is public or private, and then to examine, in the light of those principles, the facts found or established. The distinction between a private and a public the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment. The position is thus stated in *Lewin on Trusts*, 15th Edn., pp. 15-16: that whereas former in the By public must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trusts for charitable purposes, and indeed public trusts and charitable trusts may be considered in general as synonymous expressions. In private trusts the beneficial interest is vested CS(OS) 3121/2011 & 558/2014 Page 26 of 37 absolutely in one or more individuals who are, or within a time may be, definitely ascertained. certain Vide also the observations of Mtter J.

in *Nabi Shirazi v. Province of Bengal*. Applying this principle, a religious endowment must be held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or sections thereof. 39. A similar view is taken by the Supreme Court in *Sugra Bibi v. Hazi Kummu Mia* AIR (1969) SC884 wherein the Court considered two aspects. The nature of the trust as also the nature of the dispute brought before the Court i.e. as to whether it is meant to vindicate a private right or the right of the beneficiaries of the trust. The Supreme Court in this context held as under: - 7. Having examined the various clauses of the Wakf deed, we are of opinion that the mere fact that there are

certain provisions in favour of the family members of the founder along with some other provisions in favour of the public, the case will not be taken out of the provisions of Section 92, Civil Procedure Code. The reason is that there is a substantial portion of the income of the Wakf properties to be spent for purposes of charitable and religious nature. The proper test for holding whether the Wakf would fall within the purview of Section 92, Civil Procedure Code is to examine whether the Wakf has been created substantially for a public purpose. Applying the test to the present case, we are of opinion that the Wakf created by Haji Elahi Bux on November 18, 1936 falls within the purview of Section 92, Civil Procedure Code. This view is borne out by the decision of the Calcutta High Court in *S. Massirat Hossain v. Hossain Ahmad Chodhury* 42 C.W.N.

345. That case related to a wakf estate, the net annual income of which was about Rs.1.300 and out of this a sum CS(OS) 3121/2011 & 558/2014 Page 27 of 37 8. thereafter one-third, to the of Rs.353 was set apart for public purposes of a charitable or religious nature. It was held by the learned Judges that the amount by no means was a trifling or a disproportionate provision in favour of the public and consequently the suit was maintainable under s.92 of the Civil Procedure Code, Reliance was placed by the High Court in support of its decision upon the pronouncement of the Judicial Committee in *Vaidya Nath Aiyar v. Swaminatha Ayyar*, 51 I.A. 282 where the founder of the trust directed by his will that two-thirds of the income of his property would go to his wife and the remaining one-third would go first towards the discharge of certain debts and to establish a Chatram for the feeding of the poor. There was a further provision that after the wifes death, two-thirds of the income given to her would be applied to charity and members of the family. On these facts the Judicial Committee agreed with the findings of the court below that the Chatram so established was a public trust. It was, however, contended on behalf of the appellant that the suit was brought not to vindicate or to establish a right of the public institution i.e., the trust but to remedy an infringement of an individual right or to vindicate the private right of the appellant. It was said that the suit was therefore not within the purview of Section 92 of the Civil Procedure Code. The argument was stressed that in deciding whether Section 92, Civil Procedure Code is attracted the Court must go beyond the reliefs, prayed for and have regard to the capacity in which the plaintiff is suing and for the

purpose for which the suit is brought. For the respondent it was pointed out that the reliefs sought the appellant in the present suit are exactly those contemplated by Section 92 of the ,Civil Procedure Code. The reliefs prayed for are : (1) removal of the respondent the office of Mutwalli and for by from CS(OS) 3121/2011 & 558/2014 Page 28 of 37 the appointment of Soleman, appellants son, as Mutwalli in his place, and (2) till said Soleman attains majority appointment of a Receiver for the management of the Wakf estate It is true that the facts that a suit relates to public trust of a religious or charitable nature and the reliefs claimed fall within Clauses (a) to (h) of Sub- section (1) of Section 92, Civil Procedure Code would not by themselves attract the operation of the section, unless the suit is of a representative character instituted in the interests of the public and not merely for vindication of the individual or personal rights of the plaintiff. As was stated by Woodroffe, J.

in *Budreedas v. Choonilal* I.L.R. 33 Cal. 789.: that is obvious It the Advocate-General, Collector or other public officer can and do sue only as representing the public, and if, instead of these officers, two or more persons having an interest in the trust sue with their consent, they sue under a warrant to represent the public as the objects of the trust. It follows from this, that when a person or persons sue not to establish the general rights of the public, of which they are a member or members, but to remedy a particular infringement of their own individual right, the suit is not within or need not be bought under the section. 40. Having held so, the Court held that since the right sought to be enforced are not private rights but reliefs were sought for removal of a trustee for appointment of a new trustee, such reliefs fall within the scope of Section 92 CPC.

41. In *KT. N. RM. Thenappa Chettiar and Ors. v. N.S. Kr. Karuppan Chettiar and Ors.* AIR (1968) SC915 the Supreme Court held that even in the case of a private trust, a suit can be filed for removal of a trustee or for a CS(OS) 3121/2011 & 558/2014 Page 29 of 37 settlement of a scheme for the purposes effectively carrying out the objects of the trust. The relevant observation of the Court is as under: - The parties in this case have proceeded on the footing that the trust is a private trust, but the authorities establish that even in the case of a private trust a suit can be filed for the removal of the trustee or for settlement of a scheme for the

purpose of effectively carrying out the objects of the trust. If there is a breach of trust or mismanagement on the part of the trustee, a suit can be brought in a civil court by any person interested for the removal of the trustee and for the proper administration of the endowment. There are also authorities to the effect that a Civil Court may frame a scheme in the case of a private endowment at the instance of the parties interested. 42. Applying the above principles, it is clear that in the present case, the trust has been set up for charitable purposes. The objects of the trust are purely charitable in nature. The beneficiaries of the trust are the general public for whom educational, medical and other relief is to be provided by the trust. It contemplates construction of buildings, assistance to the disabled, food for the poor, etc. The objects being clearly charitable, the Court is the guardian of the trust and its property. The manner in which the immovable property of the trust was sold to one of the trustees and the funds of the trust of Rs.19.2 crores, being not traceable as on date, clearly establish that all is not well in the running of the trust.

43. There are several allegations and counter allegations by the brothers against each other. Each of the brothers and their families were to be involved in the running of the trust. However, as is evident from the Local Commissioners report, the disputes among the trustees have brought the functioning of the trust to a complete standstill. Even the funds of the trust CS(OS) 3121/2011 & 558/2014 Page 30 of 37 are not safe. It is not clear as to who is utilizing the funds and as to how the amount of Rs.19.2 crores is completely untraceable. Despite giving specific undertakings to the Court that the amount is secured, the Defendants are unable to explain as to why the funds are not available with the trust. A mere statement that the funds have been disbursed for charitable purposes, supported by a certificate of a Chartered Accountant, which to say the least is a complete farce, does not satisfy the conscience of the Court.

44. The trust has a running hospital. It was meant to provide relief to the poor and needy. The property of the trust had been tenanted and rent was being earned by the trust. As of now the tenants have vacated the premises. The building which was earning revenue is now lying vacant. There is an urgent need for the management and administration of the trust to be streamlined.

45. The new Rules and Regulations are prima facie contrary to the objects of the original trust deed and are repugnant to it. The resolutions have been passed in a completely arbitrary manner. Even the purpose for selling the immovable property i.e. building of an old age home near Ponta Sahib, Himachal Pradesh has been reneged upon as is clear from the amendment application under Order VI Rule 17 CPC wherein the Defendants sought to resile from the same. Clearly, no old age home at Ponta Sahib has been constructed. Thus, the money of the trust appears to have been used for purposes which was not even agreed to in the resolutions. The sum of Rs.19.2 crores has completely disappeared. The manner in which one of the trustees signed on behalf of the trust and executed a sale deed for the immovable property in favour of another trustee, i.e., his wife, Smt. Jupinder Kaur Maker, is clearly not bona fide. The manner in which other family CS(OS) 3121/2011 & 558/2014 Page 31 of 37 members have been ousted from the trust also shows that the intentions were not clean.

46. Whatever may be the disputes between the brothers and the other family members, the trust needs to be run in a transparent and efficient manner. Even when the Local Commissioner visited the premises of the trust, the records of the trust were not shown to the Local Commissioner. There is, thus, an imminent need for the Court to step in and to protect the trust.

47. Various objections have been raised as to the locus of the Plaintiffs. Under Section 92, the powers of the Court are quite wide. The Defendants have not deposited the sum of Rs.19.2 crores even as on date. The Division Bench has already upheld the said order. The documents, in the present case, are not in dispute. The original sale deed, the various resolutions which have been passed by the trust, the agreement to sell, the sale deed etc. are admitted between the parties. Since the documents are all admitted, the Court has to merely consider the legality of the transaction. The sale having been pursuant to the new rules and regulations which are repugnant to the original trust deed, the same are prima facie, illegal and unlawful. The rules and regulations of the trust as amended on 22nd January, 2010 are, thus, held as being void and illegal. The trust shall, thus, be continued to be governed by the original trust deed dated 6th March, 1978, except insofar as it relates to composition of the trust, powers of the managing

trustee, appointment of managing trustee and filling up of vacancies. The said Clauses of the Trust Deed would need to be amended, to enable the Trust to function. Considering the fact that prima facie, the Defendants family i.e. Shri Ajit Singh Maker and Smt. Jupinder Kaur Maker have wrested control of the CS(OS) 3121/2011 & 558/2014 Page 32 of 37 trust which is also confirmed by the Local Commissioner, there is a need to bring about a balance in the administration and management of the trust.

48. The Court in such a situation is not powerless. In a suit under Section 92 CPC, the Court cannot be a mute spectator and condone the illegalities. In order to ensure that the assets of the trust are dealt with in a manner which is necessary to achieve the objects of the trust, the Court appoints the following trustees as the interim trustees to take care of the administration and management of the trust. The trust initially had seven trustees with each of the sons having been given proper representation of the trust. Considering the prevailing circumstances and the fact that Shri Ajit Singh Maker and Smt. Jupinder Kaur Maker have violated the orders of this Court repeatedly, the interim board of trustees is constituted in the following manner:-

"(i) Shri Inderbir Singh Alag, Advocate Interim Managing Trustee (M:9810084285, Address: A238 Defence Colony, New Delhi) (ii) Smt Jupinder Maker, w/o Shri Ajit Singh Maker (iii) Smt. Mohinder Singh, w/o Shri Pritpal Singh Maker (iv) Shri Satpal Singh Maker S/o Shri Joginder Singh Maker (v) Shri. Janak Singh Bajwa (M:9810120394, Address:

522. Sector 29, Noida) (vi) Shri Sandeep Kataria Chartered Accountant (M:9810012037, Address: C-497, Defence Colony, New Delhi) (vii) Dr. Pawandeep Singh Kohli (M:9810049591, Address:

70. Mount Kailash, East of Kailash, New Delhi 110065) 49. The interim managing trustee would be responsible for the day-to-day management and administration of the trust. The interim managing trustee CS(OS) 3121/2011 & 558/2014 Page 33 of 37 shall have all the powers as vested in the managing trustee as per the trust deed. The trust shall, thus, be continued to be governed by the original trust deed dated 6th March, 1978, except insofar as it relates to composition of the trust,

powers of the managing trustee, appointment of managing trustee and filling up of vacancies. The quorum for any meeting would be at least five trustees and decisions shall be taken by a majority. The bank accounts shall be in the control of the interim managing trustee, however, all cheques and other financial instruments would require the signatures of the interim managing trustee along with any other official who may be appointed by the interim trustees for the purposes of assisting the interim managing trustee, as Secretary of the trust.

50. The interim trustees above named shall also have the power to streamline the running of the hospital, to rent out portions of the property, to enter into lease deeds and to take care of all the maintenance and upkeep of the property, to deposit the taxes and other charges for the property and take all other steps that may be required for the day-to-day functioning of the trust. The above named trustees shall function as interim trustees for the trust for a period of one year, during the trial of the suit.

51. The trust deed of 1978 is required to be modified owing to the various subsequent events, including the demise of Shri Sujan Singh and his wife. The interim Board of Trustees to suggest a draft for settling a scheme in order to take care of the future of the Trust.

52. The existing trustees/officials who are in control of the records and all other documents in respect of the trust shall hand over the same to the interim managing trustee. The expenses of the trust shall be borne from the funds of the trust. The honorarium for the interim Trustees, for attending CS(OS) 3121/2011 & 558/2014 Page 34 of 37 meetings, as also for the interim Managing Trustee, shall be fixed at the first meeting of the Trust.

53. The interim board of Trustees shall submit quarterly reports to this Court, of the activities undertaken by the Trust. The first such report shall also consist of an audit report of the accounts of the trust from financial year 2008-09 onwards. The audit report shall deal with the following aspects: - (i) The quantum of funds generated by the trust and from which sources. (ii) List the contributors to the trust. (iii) The expenses incurred by the trust and for what purposes. (iv) Whether the amount of Rs. 19.2 crores was received by the Trust and if so from whom, and

further the manner in which the same was withdrawn and in whose favour the moneys were transferred?. (v) General financial status of the Trust and its various assets.

54. The amounts, which are lying deposited with the Registrar General of this Court, shall be released in favour of the Sujan Mohinder Charitable Trust, after the Registrar General of this Court receives a letter from the interim managing trustee that he has taken over the day-to-day administration/management of the trust. Any expenses to be incurred for the running of the trust shall be borne from the revenues generated by the trust.

55. I.A. 3268/2018 under Order XII Rule 6, seeking a decree on admissions is disposed of in the above terms.

56. I.A.7332/2018 is for striking off the defence of the Defendant No.1. Since the suits are proceeding to trial, the application is disposed of.

57. I.A.10999/2018 seeks to close the right of reply of the Defendants in I.A.3268/2018. In view of the fact that the said I.A.3268/2018 is disposed of, the present application is also disposed of. CS(OS) 3121/2011 & 558/2014 Page 35 of 37 58. I.A. 4962/2015 seeks recall of order dated 5th August, 2014 granting leave under Section 92 CPC and registration of the suit. For the reasons stated above, there is no merit in this application. The same is dismissed.

59. By I.A.6069/2018, the Defendants seek to bring on record a memorandum of understanding allegedly entered into by Shri Pritpal Singh. The Defendants also seek to prove that Shri Pritpal Singh has in fact filed a collusive suit with Plaintiff No.4. Thus, the suit has been filed for vindication of private rights, which is not permissible in a suit under Section 92 CPC. In view of the above, the Defendants pray that their application being I.A. No.4962/2015 seeking recall of order dated 5th August, 2014 be heard first. I.A. 4962/2015 stands dismissed vide today's order. However, the Defendants are permitted to prove this document and their various contentions in trial. The application is disposed of, leaving the contentions raised herein to be adjudicated at trial.

60. In I.A.6862/2018, the Defendants seek dismissal of the suit, since the Plaintiffs claim to be beneficiaries of the trust and also plead that the trust is a public trust. These issues are to be decided on merits. The Court has prima facie, also found that the present trust is of a charitable nature, without any specific beneficiaries, subject to the final decision. The suit raises several issues in respect of transfer of immovable property, induction of trustees illegally, removal of trustees illegally, and various decisions taken by the trust, all of which deserve to be looked into. The suit does not deserve dismissal at this stage. The I.A. is accordingly dismissed. I.A.8178/2018 in CS (OS) 3121/2011 61. This application seeks modification of order dated 21st August, 2018 by which the tenant in the suit property, Yes Bank was directed to deposit CS(OS) 3121/2011 & 558/2014 Page 36 of 37 the arrears of rent in the Court. The Defendants pray that the rental income, along with interest, if any, be released in favour of Defendant No.2 herein i.e., Smt. Jupinder Kaur, on the ground that she is the lawful owner of the property. The rental amounts are the property of the trust. They are lying deposited with the Registrar General of this Court. The same shall be released in favour of the trust and shall be managed by the interim managing trustee, as directed above. The I.A. is disposed of. CCP(O)s 2/2018 & 45/2018 and CRL.M.As. 8598/2016, 590/2018 & 9414/2018 in CS(OS) 558/2014 62. The above applications be listed before Court on 15th February, 2019, the date already fixed. CS (OS) 3121/2011 & CS(OS) 558/2014 63. During the pendency of the suit, the undertakings given in the order dated 28th September, 2017 in paragraph 12 as modified vide order dated 20th November, 2017 shall continue to operate. The undertaking given by Shri Ajit Singh Maker, that he shall not leave the country, shall continue till the deposit of Rs.19.2 crore is made. The banks where the trust has accounts shall ensure that no funds are allowed to be withdrawn by any of the trustees except with a written consent of the interim managing trustee. Copy of this order shall be communicated to all the banks by the interim managing trustee.

64. List before Court for further proceedings on 15th February, 2019, the date already fixed.

65. A copy of this judgment be sent to the interim Managing Trustee, Shri Inderbir Singh Alag (M:9810084285) at A238 Defence Colony, New Delhi, so that the first

meeting of the Trust can be convened. Judge PRATHIBA M. SINGH
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