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Court : Delhi

Decided On : Mar-10-1978

Reported in : AIR1978Delhi274

Judge : Prakash Narain and; Pritam Singh Safer, JJ.

Acts : [Charitable and Religious Trusts Act, 1920](#) - Sections 7 and 12

Appeal No. : Letters Patent Appeal No. 52 of 1974

Appellant : Man Singh and ors.

Advocate for Pet/Ap. : Anoop Singh, Adv

Judgement :

Prakash Narain, J.

1. We had heard arguments in this appeal and had also heard the learned counsel for the appellants and two trustees of Shri Moolchand Kharaitiram Hospital Trust in C. M. 153 of 1978 and reserved Judgment. As we proceeded to judgment we noticed that no appeal was competent. We were, therefore, prima facie, of the view that we would have no jurisdiction to give any opinion, advice or direction by either agreeing with or reversing or modifying the Judgment, of the learned single Judge. Accordingly, we directed that the matter be listed for being mentioned. It was so listed on March 3, 1978. We pointed out to counsel that our research

showed that no appeal lay against the order of the learned single Judge. Learned counsel took time to study the matter and address us.

2. Today we have heard Mr. Anoop Singh, learned counsel for the appellants. He submits that the appeal is maintainable.

3. The appellants had filed a petition under Ss. 34 and 37 of the, Indian Trusts Act. 1882, praying that they as trustees of the will of one Tara Chand Saraf be permitted to sell the immoveable properties of the trust at Amritsar and directions be given that the trust property may be administered by spending the entire trust fund in the manner resolved by the trustees in their meeting held on Nov. 17, 1972. This resolution was to the effect that the immoveable properties belonging to the trust be sold and the entire amount at the disposal of the trust be spent for a useful purpose and the trust be there after wound up. The useful purpose, according to the petition filed was that the trust funds be utilised for building of a marriage hall and a house on the land allotted to Akali Baba Phoola Singh Educational Society Pusa Road, New Delhi.

4. The learned single Judge was of the view that no petition under the Trusts Act was maintainable inasmuch as the will of the testator disclosed that the trust constituted by him was of a Public nature. The Trusts Act only defined and amended the law relating to private trusts and trustees. Our learned brother was, however, not prepared to throw out the petition on that technical ground and so, treated the petition filed by the appellants as one under S. 7 of the [Charitable and Religious Trusts Act, 1920](#). After giving his opinion on the matter in issue our learned brother declined to give the permission as sought. He, however, observed that keeping in view the wishes of the testator and the Purposes of the Trust, as constituted, a full-fledged hospital in the context of today could not be either constructed or maintained in the limited funds available with the trustees. So, pursuant to the principle of cy pres the trustees must then do that which is as near as possible to the intention of the testator and that the obvious solution may be for the trustees to arrange with an existing hospital in Delhi for setting up a ward or unit reserved for the treatment of women. Aggrieved against this judgment the appellants had filed the present appeal. The question that came up before us, as

we have said. was whether an appeal lay.

5. S. 7 (1) of the [Charitable and Religious Trusts Act, 1920](#), authorizes the trustees of a trust created or existing for public purpose of a charitable or religious nature to apply to the court for its opinion, advice or direction on any question affecting the management or administration of the trust Property and the Court is required to give its opinion, advice or direction. Section 34 of the Indian Trusts Act gives a similar right to any trustee of a private trust to apply to the Court for its opinion, advice or direction on any present questions respecting the Management or administration of the trust property other than, questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal. The court is then required to give its opinion, advice or direction.

6. Now if the petition is treated as one under S. 7 of the [Charitable and Religious Trusts Act, 1920](#) no appeal lies from any order passed or against any opinion or advice or direction given by virtue of S. 12 of the said Act. The Judgment of the learned single Judge is thus not appealable.

7. If the petition is treated as one under S. 34 and S. 37 of the Trusts Act, once again, no appeal lies. (See *Trimbak Mahadev Tilak v. Narayan Hari Lele* (1909) 33 Bom 429. The reason for appeals not being competent in either case is obvious. It is primarily the duty of the trustees to administer the Trust in accordance with the purpose of the trust. If they feel any difficulty, they approach the court for advice or opinion or direction in order to safeguard their position. The court in such a case is acting in an advisory Capacity. No appeal would lie against an advice. Appeals lie against pronouncement of law and fact and not

against opinion or advice.

8. Mr. Anoop Singh submitted that if the petition was treated by the learned single Judge as one under S. 7 of the Charitable and Religious Trusts Act it was incumbent upon the court to see that there was compliance with sub-secs. (2) and (3) of S. 7. That, it is submitted, had not-be6a done and so, the impugned Judgment is illegal or at least passed with material irregularity and, was therefore, appealable. In our opinion, the contention has no force. Without

commenting upon whether sub-secs. (2) and (3) of S. 7 were complied with or not, we would only say that the appellate court would be competent to dilate on this aspect, only if an appeal was competent. That not being so, we cannot make any observations in this behalf.

9. It was next urged that the Appeal would be competent under the Letters Patent of the Lahore High Court, as applicable to the High Court of Punjab and in turn made applicable to the High Court of Delhi. Here again in our opinion, the submission is without force. If a petition is filed under a special statute then the provisions of that statute alone would govern the proceedings. It will not be possible to invoke the Letters Patent to urge a right to file an appeal. As we have noticed, section 12 of the Charitable and Religious Trusts Act specifically bars an Appeal. It has been held that no appeal lies against an opinion given under S. 34 of the Trusts Act. therefore, to, invoke the assistance of Letters Patent is futile.

10. Learned counsel for the appellants then submitted that he should be given leave to withdraw the appeal as well as the petition filed in this court which has been disposed of by a learned single Judge. He submitted that if the appeal is dismissed the interest of the trust may be jeopardised. We appreciate learned counsel's anxiety to safeguard the interest of the trust. However, we find ourselves incapable to grant him leave to withdraw the appeal and the petitions as, in our view, the appellate court can pass such an order only if it can entertain the appeal. We have already held that the appeal is not maintainable.

11. We therefore, dismiss the appeal. In the interest of the trust and in view, of the observations of the learned single Judge we are, however, of the opinion that the appellants will be at liberty to take such other or further steps as may be available to them in law, including the moving of an application under S. 7 of the [Charitable and Religious Trusts Act, 1920](#).

12. The original will produced by Mr. Anoop Singh on Feb. 28, 1978 has been returned to him by handing over the same in court.

13. Appeal dismissed.

