Chandra Nath Dash and ors. Vs. Dinendra Nath Dash and ors.

Chandra Nath Dash and ors. Vs. Dinendra Nath Dash and ors.

SooperKanoon Citation : sooperkanoon.com/915597

Court : Kolkata

Decided On : Mar-17-2011

Judge : Sanjib Banerjee, J.

Acts : Code of Civil Procedure (CPC) - Section 92(2)(1)

Appeal No. : GA No. 80 of 2010; GA No. 170 of 2011; CS No. 328 of 2009.

Appellant : Chandra Nath Dash and ors.

Respondent : Dinendra Nath Dash and ors.

Advocate for Def. : Mr. S. N. Mitra, Adv.

Advocate for Pet/Ap. : Mr. P. K. Das, Adv.

Judgement :

1. GA No. 170 of 2011 is the application by the first and second defendant trustees challenging the maintainability of the suit. GA No. 80 of 2010 is the plaintiffs application for interlocutory reliefs. The plaint relates to a trust which the plaintiffs claim to be a private trust and the first and second defendants claim to be a public trust. The plaintiffs say that the trustees have mismanaged the affairs of the trust and in view of the fact that paltry amounts were provided for at the time that the trust was settled in or about 1934, a scheme has now to be framed by the Court.

2. On behalf of the first and second defendants the bar under Section 92(2) of the Civil Procedure Code is cited. The defendant-trustees claim that if the primary

purpose of a trust is to confer benefits on unidentifiable members of the public, in the sense that the beneficiaries therein are not sufficiently identified, then the provisions of Section 92 would be attracted and no suit may be instituted without the preconditions in sub-section (1) thereof being met. In support of such contention, the defendant Nos 1 and 2 have relied on judgments reported at AIR 1957 SC 133; AIR 1969 SC 884 and 2011 (1) Cal LJ 257.

3. In the first case the distinction between a public trust and a private trust was made out. In the second case the Supreme Court found on facts that the trust in question was a public trust of religious and charitable nature. In the most recent judgment of this Court cited by the defendant-trustees, the point was slightly different. The Court held in such case that if the object of the suit instituted under Section 92 of the Code was for the personal benefit of the plaintiffs, it would not be maintainable.

4. In the present case, the first clause of the deed indicates that a sum of Rs. 45,000/- set apart in Part I of the Schedule to the deed would be used for public charitable purpose. There are other clauses in the deed which provide for additional funds to be used in accordance with the first clause of the deed, i.e. for public charitable purpose. However, a substantial part of the deed provides for the rents and proceeds for divers immovable properties under the trust to go to the various relatives of the settler. The settler became one of the initial trustees and thereafter one of the trustees has to be a descendant of the settler, if a descendant is available.

5. It is evident from the deed that though the first clause is of public charitable nature, there are several other clauses which cover the more substantial part of the activities of the trust which are private in nature and the use of funds is restricted to either named beneficiaries or identifiable beneficiaries from the settlers family.

6. As to whether the trust is a private trust or a public trust is essentially a question of fact. On a reading of the deed it, prima facie, appears that the more substantial assets of the trust are for the benefit of individuals who have been indicated in the deed. It does not appear on a reading of the deed that the overwhelming character

of the trust is public in nature.

7. Accordingly, GA No. 170 of 2011 is disposed of by permitting the first and second defendants to carry the objections as to the maintainability of the suit to the trial. There will be no order as to costs. As far as the plaintiffs application is concerned, the appearing parties have agreed that the parties will not deal with or dispose of or alienate or encumber the trust properties which have been detailed at paragraph 2 of the plaintiffs petition without previous leave of Court.

8. The defendant-trustees have also agreed that no new person will be inducted at any of the trust properties without previous leave of Court. The appearing defendants have made such submission without prejudice to their rights and contentions in the suit, including their point that the suit is not maintainable.

9. In addition, Mr. Sandwip Mukherjee, Advocate is appointed as Special Officer for the purpose of ascertaining the various occupants at the several properties which have been indicated at paragraph 2 of the plaintiffs petition and for ascertaining the extent of occupation of such occupants. The Special Officer will visit the properties and will prepare a report detailing therein the names of the occupants and the areas under their occupation along with the amount of rent or occupation charges claimed by such occupants to be paid to the trustees. Such report should be prepared within four weeks from date.

10. The Special Officer will be paid a remuneration of 1500 GM of which 1000 GM will be paid by the plaintiffs and 500 GM will come out of the funds of the trust. The Special Officer will stand discharged upon filing the report and circulating copies thereof to the parties. The trustees are also directed to circulate the audited annual accounts to the plaintiffs within seven months of the completion of every financial year. GA No. 80 of 2010 is disposed of without any order as to costs. Urgent certified photocopies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.