

---

University for the year 1997. The Full Bench judgement, therefore, cannot have universal application as has been contended by the learned counsel.

(6) It is the admitted case that the syllabi for the 1st year course of study for the MBBS and B.D.S. are the same. It is also evident that respondent No. 5 has now completed almost 8 months of the course. It would therefore, be unfair at this belated stage to put him on the way side by quashing his selection and make him lose a year. I am, therefore, of the opinion that this is a case where an additional seat ought to be created for the MBBS course in the respondent No. 3 college. This petition is accordingly disposed of with the direction that petitioner will be granted admission forthwith in the MBBS Course in the respondent No. 3 College against a payment seat and the concerned respondents shall take immediate steps for the creation of an additional seat to adjust respondent No. 5. It is also directed that respondent No. 4 shall refund the proportionate amount of the fee paid by the petitioner and respondent No. 3 College will be entitled to charge only the fee for the balance of the 1st year course of study. It is also directed that the classes attended by the petitioner in the respondent No. 4 college will be counted towards the petitioner's attendance in respondent No. 3 college as well. There shall be no order as to cost. *Dasti* order.

*J.S.T.*

*Before N.K. Sodhi, J*

NEERAJ SAINI & ANOTHER,—*Petitioners*

*versus*

USHA GOEL & OTHERS,—*Respondents*

C.R. No. 5258 of 1998

26th November, 1998

*Code of Civil Procedure, 1908-S. 92-Application for leave to institute suit-Petitioners residents of Delhi-Claimed that Dharamshala used whenever petitioners visited Rewari-Use of Dharamshala does not create such an interest so as to entitle them to sue-Application rightly rejected.*

*Held that the petitioners are residents of Delhi and it is claimed that whenever they visit Rewari they use the Dharamshala. This*

user, in my opinion, does not create such an interest in them so as to entitle them to sue under Section 92 of the Code. Their application for leave to institute the suit was, therefore, rightly rejected by the trial Court.

(Para 3)

*Code of Civil Procedure, 1908—S.92-Discussed—Suit u/s 92 is a suit of special nature—can be instituted only if essential ingredients are satisfied—object to prevent people interfering by virtue of the section in the administration of Charitable Trust—Interest in trust must be real and substantive and not remote and fictitious.*

*Held that* suit under section 92 of the Code is a suit of a special nature which can be instituted only if the essential ingredients of the section are satisfied. The maintainability of such a suit depends upon the allegations in the plaint and no reference need be made to the averments in the written statement for such determination. A suit under this Section can be brought by (i) the Advocate General or (ii) two or more persons having interest in the Trust after obtaining leave of the court. When the suit is instituted by persons other than the Advocate General the essential requirement of the Section is that they should have interest in the Trust. Obviously, the object of this condition is to prevent people interfering by virtue of the section in the administration of charitable trusts merely in the interest of others and without any real interest of their own. The interest required under the Section must be a clear interest in the particular trust over and above that which men may generally have in common with others. It must indeed be a real, substantive and an existing interest and not merely a remote, fictitious or contingent one though it need not be a direct interest in the sense that only a beneficiary can institute a suit.

(Para2)

Rao Ranjit Advocate, for the Petitioner

### JUDGMENT

*N.K. Sodhi, J.*

(1) Petitioners filed a petition under Section 92 of the Code of Civil Procedure (for short the Code) in the court of Additional District Judge, Rewari, for obtaining leave of the court to institute a suit for permanent injunction against the respondents and also to seek

---

their removal as trustees of the 'Rai Bahadur Makhan Lal Dharamshala' a public charitable trust situated at railway road, Rewari. It was alleged that Shri Nemi Chand Jain founder of the Trust had dedicated the Dharamshala to the public charitable trust for the benefit of the travellers which stands registered as such in the year 1954 and is being used by the general public. It was further alleged that the respondents have forged a trust deed dated 22nd November, 1995 making a false statement that Smt. Usha Goel was the sole remaining trustee as on 22nd December, 1995 whereas there were other trustees as well. It was further averred that the respondents have committed breach of trust and by committing forgery they are wanting to sell the property of the trust and that the income of the Trust is being misappropriated. The respondents are alleged to have occupied a part of the Dharamshala as their residence. The petitioners claim that they have interest in the Trust inasmuch as being members of the general public, they use the Dharamshala off and on. The trial court dismissed the petition as per order dated 24th October, 1998 observing that the petitioners who are claiming to be using the Trust property during their visits to Rewari cannot be said to have an interest therein and, therefore, they have no *locus standi* to move the petition. It is against this order that the present revision petition has been filed.

(2) I have heard counsel for the petitioners who has taken me through the application filed before the trial Court for obtaining leave of the court and also through the prayers which the petitioners want to make in the suit which they will eventually file if leave is granted to them. A suit under Section 92 of the Code is a suit of a special nature which can be instituted only if the essential ingredients of the Section are satisfied. The maintainability of such a suit depends upon the allegations in the plaint and no reference need be made to the averments in the written statement for such determination. A suit under this Section can be brought by (i) the Advocate General or (ii) two or more persons having interest in the Trust after obtaining leave of the court. When the suit is instituted by persons other than the Advocate General the essential requirement of the Section is that they should have interest in the Trust. Obviously, the object of this condition is to prevent people interfering by virtue of the section in the administration of charitable

---

Trusts merely in the interest of others and without any real interest of their own. The interest required under the Section must be a clear interest in the particular Trust over and above that which men may generally have in common with others. It must indeed be a real, substantive and an existing interest and not merely a remote, fictitious or contingent one though it need not be a direct interest in the sense that only a beneficiary can institute a suit. It is also not necessary that the plaintiffs should prove that they have interest in every part of the property comprised in the Trust. Whether a person has an interest in a particular Trust has to be determined on the facts of each case bearing on the relation of the person to the Trust with reference to which the suit is brought.

(3) In *T.R. Ramachandra Iyer and another v. P. A. Parameswaran Munbu and another* (1), the plaintiff was a practising advocate and a Brahmin residing in Madras. He instituted a suit under Section 92 of the Code with respect to a temple situated in Tellicherry. He claimed that on a few occasions when he visited Tellicherry in his professional capacity he worshipped in that temple. It was held that a right to worship in a temple is not such an 'interest' as will give worshipper a right to sue under Section 92 of the Code. This view of the Madras High Court was referred to with approval by the Privy Council in *Vaidyanatha Ayyar and another v. Swaminatha Ayyar and another* (2), wherein it was observed that "the bare possibility, however remote, that a Hindu might desire to resort to a particular temple gives him an interest in the Trust, appears to defeat the object with which the legislature inserted these words in the Section". In the case *Harnam Singh v. Gurdial Singh* (3), the religious institution was running a free kitchen, serving free food to the visitors and the residents of the village where such food was served were held not to have any interest entitling them to file a suit under Section 92 of the Code. The observations of the Madras High Court in *Ramachandra Iyer's* case (*supra*) were approved. In the instant case, the petitioners are residents of Delhi and it is claimed that whenever they visit Rewari they use the Dharamshala. This user, in my opinion, does not create

---

(1) A.I.R. 1919 Madras 384

(2) A.I.R. 1924 P.C. 229

(3) A.I.R. 1967 S.C. 1415

---

such an interest in them so as to entitle them to sue under Section 92 of the Code. Their application for leave to institute the suit was, therefore, rightly rejected by the trial Court.

(4) In the result, there is no merit in the revision petition and the same stands dismissed.

---

*J.S.T.*