

Smt. Saroj Bala & Ors. **Plaintiffs**
Versus
Dr. Pawan Lal & Ors. **Defendants.**

20.07.2022

Present: None.

1. By way of this order, this court shall decide an application filed on behalf of plaintiff u/o 14 rule 5 r/w section 151 CPC. It is averred in the application that on 02.09.2019 Ld. predecessor of this court had allowed an application of Pandit Chander Haas Guru Mandir Trust filed u/o 1 rule 10 CPC and said trust was impleaded as defendant no.5 in the present suit. The newly impleaded defendant no.5 has filed written statement alongwith certain documents and plaintiff had also filed the replication to the W.S. on behalf of defendant no.5. It is further submitted that in view of the pleading with respect to newly added defendant no.5 following issues needs to be framed:

(a) Whether the written statement filed on behalf of defendant no.5 has been filed by competent person? OPD

(b) Whether the trust i.e. Pt. Chander Hass Guru Mandir Trust created by defendant no.4 was legally and validly created?OPD

(c) Whether the Will dated 02.12.2009 alleged to have been by defendant no.4 is legal and valid? OPD

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(d) Whether the defendant no.4 was the owner of property no. IX/7375, Gandhi Nagar, Delhi31 and property No. IX/7364, Gandhi Nagar, Delhi110017?OPD

2. Reply to the aforesaid application is filed by defendant no.5. It is submitted on behalf of defendant no.5 that present application merits rejection as written statement on behalf of D5 was filed on 12.02.2021 but present application has been preferred after more than 8 months. It is further submitted that first proposed issue no. (a) regarding filing of written statement by a competent person, appears to be whimsical in the light of the fact that second document filed alongwith the document is the resolution duly signed by five trustee out of 10 named trustees in the trust by which defendant no.5 Satish Kumar has been authorized to sign and file written statement and therefore framing of this issues would be an exercise of futility. It is further submitted that second proposed issue No. (b) regarding legality or creation of trust can only be assailed by filing a suit for declaration within period of limitation as prescribed by law of limitation as plaintiff has got knowledge of creation of trust since the date of creation thereof and fact regarding creation of trust was also mentioned by defendant no. 4 on page no. 18 in response to para 2 (e) of plaint in the year 2006. Hence, plaintiff cannot seek a declaration regarding legality and validity of trust after 15 years. It is further submitted that in the probate petition the said trust was one of the petitioners and plaintiff moved an application u/o 1 rule 10 CPC on 27.02.2015 but the same was dismissed on 30.11.2015 and if the said date of knowledge were to be reckoned, from that date it shows that plaintiffs had knowledge of trust and present application has been moved after 6 years, hence, plaintiff cannot legally seek a declaration regarding legality and validity of trust as same is hopelessly barred by limitation. As far as third proposed issue No. (c) is concerned it is submitted

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that Will of Smt. Shakuntala Devi dated 02.11.2009 had already been probated by Hon'ble High Court of Delhi in testamentary case No. 5/2013 vide judgment dated 13.04.2013 and said order of dismissal was never assailed. It is further submitted that last proposed issue no. (d) as regards defendant no. 4 being the owner of properties no. IX / 7375 and IX/ 7364 Gandhi Nagar, Delhi is totally untenable in the light of issue no.2 framed vide order dated 28.04.2014 Hon'ble High Court of Delhi wherein it is categorically mentioned that it is for the parties to prove whether late Shri Chander Haas was the owner of the properties in respect of which the present suit has been filed. The said issue being all encompassing no further issues in that respect needs to be framed.

3. Arguments have already been heard on behalf of parties. Record perused and considered.

4. As far as proposed issue no.1 is concerned, this court is of the view that plaintiffs are disputing the fact that written statement on behalf of defendant no.5 has not been filed by the competent person. However, perusal of document filed alongwith the W.S. shows that out of seven surviving trustees, five trustees have authorized D5 to sign and file the written statement. Onus of proof as per application of the plaintiff, this issue is upon the defendant. This court is of the view that no harm will be caused to the defendant if the aforesaid issue is framed, but onus to prove the said issue should not be laid upon the defendant as only plaintiff is disputing the same. Hence, the issue no. (a) may be framed as mentioned in the plaint but onus of proof will be on the plaintiff.

5. As far as proposed issue no. (b) is concerned regarding legality and validity of trust, this court is of the view that whether it is barred by law of limitation or not is mixed question of law and fact and same can be decided

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only after trial. But the onus to prove this issue should not be on the defendant as plaintiffs are disputing the legality of said trust. Hence, this issue be also framed but onus to prove this issue will be on the plaintiff.

6. As far as proposed issue no. (c) regarding legality and validity of Will dated 02.12.2009 is concerned, this court is of the view that there is no need to frame this issue as issue regarding validity of the said Will admittedly has already been decided in the probate petition by Hon'ble High court of Delhi.

7. Lastly, as far as proposed issue no. (d) regarding the dispute as to whether defendant no.4 was the owner of property no. IX/7375, Gandhi Nagar, Delhi and property No. IX /7364, Gandhi Nagar, Delhi is concerned this court is of the view that issue in this regard may also be framed as no harm would be caused to both the parties if specific issue in this regard is framed as plaintiffs in their replication to the W.S. filed on behalf of D-5 have submitted that defendant no.4 was not the owner of the said property and therefore defendant no.4 had no right, title or interest in the said property. The Hon'ble High Court vide order dated 28.04.2014 had already framed issue no.2 which says that whether suit property in respect of the present suit is filed belongs to late Shri Chander Haas and onus to prove the said issue is on the parties. The defendant no. 4 in her written statement has submitted that property no. IX/7365, Gandhi Nagar, Delhi was not owned by late Shri Chander Haas. It is also submitted in the written statement of D-4 that late Pt. Chander Haas managed Guru Mandir during his lifetime and after his death his wife Smt. Lajwanti managed the Guru Mandir and after her death, management of Guru Mandir was entrusted to defendant no.4 and same is being managed as per wishes of Pt. Chander Haas. This court is of the view that there is need to frame specific issue as to whether defendant no.4 was the owner of aforesaid

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properties or not but the onus to prove said issue shall be on defendant no.5. In view of above submissions, the present application is disposed off accordingly. The additional issues are being framed as under:

- 1) Whether the written statement filed on behalf of defendant has been filed by competent person? OPP
- 2) Whether the trust I.e Pt. Chander Haas Guru Mandir Trust created by defendant no.4 was legally and validly created? OPP
- 3) Whether the defendant no.4 was the owner of property no. IX/7375, Gandhi Nagar, Delhi-31 and property No. IX/7364, Gandhi Nagar, Delhi-17? (Onus to prove on D-5.)

Put up for PE on 24.08.2022.

(Rajesh Kumar)
Additional District Judge-03
East/Karkardooma/Delhi
20.07.2022