

**In the Court of Ms. Kaveri Baweja: Addl. District Judge-03 (West)
Tis Hazari Courts: Delhi**

CS No.21/14/10 (New No. 612194/16)

In the matter of:

Subhash Chand Kaushik & Ors.

.....Plaintiffs

Versus

The Registrar of Societies & Ors.

.....Defendants

ORDER

03.12.2016

1. This order deals with three applications, all filed under Order 7 Rule 11 CPC, one filed by Defendant No. 3 to 5, the second filed by Defendant No. 6, 11, 18 and 24 and third filed by Defendant No. 9, 12, 16 and 19 praying for rejection of the plaint.

2. The brief facts of the case relevant for the purpose of disposal of the applications under consideration are as follows:-

3. The Plaintiffs claim to be the Executive Member/office bearers of the Gandhi Samarak Gramseva Kendra (hereinafter referred to as the Society for the sake of brevity). The society was duly registered on 12.06.1962 with the office of Defendant No.1 i.e. Registrar of Societies. It

is the case of the Plaintiffs that the society was constituted and got registered with the object to improve and increase the moral, social, cultural and educational standard of the rural population and to do the welfare work by spreading the ideology of Mahatma Gandhi. With the contribution of the residents of village Hastal, the society also run Rashtra Shakti Vidyalaya which is functioning under the management and control of the society. It is further stated that in the land of the said society an animal hospital is also running, however, the same is under the control of Delhi Administration.

4. The Plaintiffs claim that Defendant No.2 was the Secretary of the Society and Defendant No.3 was the member of the Society, while Defendant No.4 is another Society which was registered on 07.11.1962 and was having separate bye-laws at the time of its registration. However, subsequently, the registration office of the Defendant Society got transferred from its original place to Patparganj and the Defendant No.2 claims to be the Vice Chairman in the Defendant Society, whereas Defendant No.5 claims to be the Principal of the School. It is also pleaded that with the connivance of the employees of the school, fake members, their associates and Defendant No.5, Defendant No.2 got approved the illegal order of the dissolution of the Gandhi Samarak Gram Seva Society from the Registrar of Societies on

24.03.2009.

5. By way of this suit the Plaintiffs seek the following reliefs:-

“a) Pass a decree for cancellation of Order dated 24.03.2009 passed by the Defendant No.1 i.e. Registrar of Societies when the Defendant No.1 dissolved the Gandhi Samarak Gramseva Kendra (Registration No.S 2049) and further restoring the Gandhi Samarak Gramseva Kendra to its original position.

b) Pass a decree of declaration thereby declaring the alleged General Body Meeting of Gandhi Samarak Gramseva Kendra dated 18.09.2008 as null and void.

c) Pass a decree of declaration thereby declaring all the alleged members of the Gandhi Samarak Gramseva Kendra which are illegally enrolled by Defendant No.2 and 3 as illegal.

d) Pass a preliminary decree for declaration holding and declaring that the defendants are liable to render accounts/records directing the defendants jointly and severally to render complete and honest account of the Gandhi Samarak Gramseva Kendra and the properties and the assets attached therewith i.e. Rashtra Shakti

Vidalaya for the period of past three years i.e. from the year 2007-08 to till date and the manner in which the properties and other movable assets forming part of the estate of Gandhi Samarak Gramseva Kendra have been dealt with since its illegal dissolution.

e) Pass a decree of permanent injunction whereby prohibiting the Defendants to deal with the properties/assets of the Gandhi Samarak Gramseva Kendra Society i.e. the school of the Society, office of the Society, veternity hospital existing on the land bearing No.54/4/2/2, 5/6/1, 7/2/1/2 admeasuring 7 bigha 14 biswa situated in village hastsal, Delhi and the accounts maintained in the bank of Baroda, Nawaa Branch, Delhi bearing No.2125010000232, 3233, 10957, 10958, 1237, 830, 2923, 2937, 2974, 2975, 2976, 2977 and 2978.

f) Pass a decree of permanent injunction thereby restraining the defendants from transferring, alienating, assigning, selling or otherwise parting with possession, carrying out additions and alternations or disposing of any property/assets of Gandhi Samarak Gramseva Kendra in favour of any other person.

g) Pass a decree of rendition of accounts in favour of the

plaintiff and against the defendant directing the defendant to render the true and correct account of the societies the true and correct account of the societies i.e. Gandhi Samarak Gramseva Kendra and the assets/properties attached with it.”

6. It is the claim of the applicants that though the suit has been titled as a suit for declaration, mandatory and permanent injunction and rendition of accounts, however in essence, the suit has been filed with a view to seek restoration of possession of Gandhi Samarka Gram Seva Kandra and its assets i.e. Rashtra Shakti Vidalaya i.e. veterinity hospital existing on the land bearing No.54/4/2/2, 5/6/1, 7/2/1/2 admeasuring 7 bigha 14 biswa situated in village Hastal, Delhi and the accounts maintained in the Bank of Baroda, Nawada Branch, New Delhi, to the Plaintiffs.

7. It is contended that apparently the Plaintiffs are not in possession and the possession of the Rashtra Shakti Vidalaya and the accounts is with the Defendants/Applicants. The Plaintiffs, by cleverly drafting the plaint, have not valued the suit property in the relief of possession, in fact have not sought the said relief, though in effect, the Plaintiff seek restoration of possession of the aforesaid properties of the Society and are thus liable to *ad veloram* court fees since in essence they are seeking the relief of possession.

8. It is further contended that the Rashtra Shakti Vidalaya is constructed on land measuring 6160 sq. mtrs. and the Plaintiff ought to have paid court fees as per the valuation thereof. Further, the Plaintiffs have wrongly affixed the court fees on the relief of rendition of accounts though they are aware that lacs of rupees are lying in the account and FDRs and they are liable to pay ad-valorem court fee on this amount.

9. The Plaintiffs/non-applicants, on the other hand, opposed the aforesaid contentions of the applicants claiming that the applications are frivolous and devoid of merits. It is submitted that the Plaintiffs have not sought any relief for possession and thus no question arises for affixing the court fees for the said relief. It is also denied that the plaint has been cleverly drafted with a view to avoid payment of court fees.

10. The next contention of the Plaintiff is that the property of the Society is not the property of any individual and is not in possession of anybody and thus no claim can be made to the physical possession of the property of the Society in any manner whatsoever.

11. Detailed arguments were advanced by learned counsels for the parties who have also placed on record their voluminous written submissions along with judgments in support of their respective contentions.

12. I have considered the same in the light of facts and circumstances of the case and on considering the same, I am of the opinion that the applications under consideration, being devoid of merits, are liable to be dismissed for the reasons as enumerated in the following paragraphs of this order.

13. Though there can be no doubt with regard to the settled proposition that while determining the question of court fees, it is subsistence of relief claimed as disclosed in the plaint which is to be considered as a whole and not merely the form in which the relief claimed is expressed.

14. It is contended by the applicants that on reading the plaint as a whole it appears that the relief sought by the Plaintiff is in fact that they are seeking the possession of the suit property from Defendant No.2 and thus the relief of recovery of possession is in fact the substantive relief claimed by the Plaintiff.

15. The relief of recovery of possession is consequential to the relief of declaration and mandatory injunction and thus Section 7 (V)(e) of the Court Fees Act is attracted in the present case as laid down in the case of **Ashok Chaudhary vs. Inderjit Singh, 1998 (4) (AD) Delhi 917**. The applicants also

relied upon the case of *Punjab Exchange vs. Rajdhani Grains Ltd., 1975 RLR 485* and *Jugal Kishore vs. Des Raj Seth, 1968 (4) DLT 571* besides the case of *Rampur Distillery & Chemicals Co. Ltd. vs. UOI, 57 (1995) DLT 642* in support of its contentions that it is the substantive relief as claimed which has to be considered while deciding the issue of payment of court fees.

16. However, as per Section 5 of the Societies Registration Act, the properties of the Society are vested with the governing body of the Society which manages the entire property of the Society. Section 5 of the Registration Act reads as under:

“5. Property of Society how vested.-

The Property, moveable and immoveable belongs to a Society registered under this Act, if not vested in trustees, shall be deemed to be vested for the time being in the governing body of such Society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such Society by their proper title”.

17. A bare perusal of the aforesaid statutory provision reveals that the property of all Societies is vested therein and all the rights are vested with the Governing Body of the Society. There is in fact no transfer of any property of the Society through any title deeds and it is the governing body of the

Society which manages the properties and as and when there is a change in the governing body, the rights in the said properties are automatically vested therein.

18. In this regard, reliance may be placed on the judgment cited by learned counsel for the Plaintiff titled as *Harinarayan Shaw & Anr. vs. Govardhandas Shroff and Ors., reported as AIR 1953 Cal. 140*, wherein it has been laid down as under:-

“..... By operation of the provisions contained in Section 5 of the Act, and the very purposes for which Registration is provided in the Act the registered Society automatically obtained rights over the property. The property is at the disposal of the Society, subject, no doubt, to the Section 5 of the Act, a property, whether “vested in trustees” or be “deemed to be vested in the Governing Body of such Society” may still belong to a Society registered under the Act.

.....It must, therefore be held that the disputed property which was vested in the trustees before registration of the Society, became, as from after the registration of the Society, a property “belonging to the Society” and be deemed to be the property of the

Society. As a matter of fact, and strictly speaking, there is no transfer of ownership. That which belonged to an unregistered Society continues after the change in status of that society on being registered, as being belonging to the registered Society. The first point raised on behalf of the appellants must, therefore, be overruled.”

19. Similar view has been taken by the Apex Court in the case titled as *Tata Memorial Hospital Workers Union vs. Tata Memorial Centre & Anr., reported a VII (2010) SLT 483.*

20. Thus, apparently there is no transfer of ownership of the property of the Society. In the present case also, the mere fact that the Plaintiffs have prayed cancellation of order dated 24.03.2009 passed by Defendant No.1 in addition to praying for restoration of Gandhi Samarak Gramseva Kendra to its original position, cannot be said to be imply that the Plaintiff has sought for actual physical transfer of possession of the properties of the Society.

21. I am also unable to subscribe to the arguments of learned counsel for the applicants that the School run by the Society is a separate juristic entity or that the Plaintiff have claimed possession of the land on which the school is running, by way of filing the present suit as has been laid down by the

Hon'ble Apex Court in the case titled as *Municipal Corporation of Delhi vs. Children Book Trust, 47 (1992) DLT 424 (SC)*. The school run by the Society is not a specific juristic entity different from the society.

22. In so far as the contention of the applicants with regard to the payment of court fees on the relief of rendition of accounts is concerned, I find that the question of rendition of account is one which can be adjudicated upon only after considering the evidence led in the course of trial.

23. At this stage, it is difficult to determine the value of the accounts and as such the Plaintiff cannot be expected to fix the requisite court fees thereof.

In *M/s Commercial Aviation and Travel Company & Ors. vs. Mrs. Vimla Pannalal, AIR 1988 SC 1636*, the Hon'ble Apex Court has taken similar view and has held that it is not possible at a preliminary stage to determine the value of the relief in a suit for accounts simpliciter.

24. Accordingly, I find no force in the contention of the applicants that the Plaintiff ought to have paid the court fees with regard to the accounts of the society. I may however, hasten to add that the requisite court fees on the same can be directed to be paid by the Plaintiff in the event a finding is returned in respect of relief of rendition of accounts in favour of the Plaintiff,

as claimed.

25. In view of the aforesaid discussion, all the applications under Order 7 Rule 11 CPC are hereby dismissed. No order as to costs.

**Announced in open court
today on 03.12.2016**

**(Kaveri Baweja)
ADJ-03(West), THC, Delhi**

New No. 612194/16

Subhash Chand Kaushik & Ors. vs. Registrar of Societies & Ors.

03.12.2016

Present: None.

Vide separate orders of even date, applications filed under Order 7 Rule 11 CPC stand dismissed.

The case is now directed to be listed for further proceedings on

21.03.2017.

(Kaveri Baweja)
ADJ-03(West), THC, Delhi
03.12.2016