

Special Civil Suit No. 99/2016

Order below Ex. 30

L.A. Mr. V.B. Surti for the plaintiff.

L.A. Mr. T. M. Desai for the defendant No. 1,2,4 & 5.

Defendant No. 3 party-in person.

1. The plaintiffs have filed this application requesting that as defendant no. 3 is one of the trustee of defendant no. 1 viz. Pragathi Mahila Mandal, as per the provisions of section 47 of The Indian Trust Act, 1882, a trustee cannot delegate his or her power to another person.
2. The summons was dully served to the defendant no.3 and her power of attorney Mr. Amruthbhai Jivanbhai Patel, has appeared in the present case. Further, as per the provisions of section 47 of The Indian Trusts Act, 1882, Mr. Amruthbhai Jivanbhai Patel has no legal power and therefore, he cannot remain present on behalf of the defendant no. 3. Hence, on 23/1/2017, whatever documents is produced may be returned to him, because the said documents cannot be legally acceptable.
3. Heard L.A. for the plaintiffs, defendant no. 1, 2, 4 & 5 and party- in person.
4. L.A. for the plaintiff has vehemently argued that, as per the provisions of section 47 of

The Bombay Act, 1950, a trustee cannot delegate his office or any of his duties either to a co- trustee or to a stranger unless, (a) the instrument of trust so provides, or, (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or, (d) the beneficiary, being competent to contract, consents to the delegation.

5. The power of attorney holder Mr. Amruthlal J. Patel, of defendant no. 3 has produced reply to this application at Ex. 32 contending interalia that, as the suit of the plaintiff is false, bogus, frivolous and vexatious, as he has the power of attorney of the defendant no.3, he has power to appear in the case, argue, submit the documents etc. as per the provisions of Civil Procedure Code, he has authority and right to make submission on behalf of the defendant no. 3, as the defendant no 3 has not appointed him in her duty towards the defendant no. 1 trust , but she has given power to appear, to plead, to make arguments etc. in the present suit, as the application of the plaintiff (Ex. 30) is not prima facie tenable at law and as the plaintiff is not entitled to get relief prayed in the application (Ex. 30), it is liable to be rejected.

6. According to the provisions of section 47 of The Indian Trust Act, 1882, a trustee cannot delegate his office or any of his duties either to a co- trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the

regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation. But, in this case, the defendant no. 3 has given power to power of attorney, Mr. Amruthlal J. Patel, not in her duties towards defendant no. 1 trust.

7. In this circumstances, this Court pass the following.

ORDER

It is hereby ordered that this application be rejected.

Pronounced in the open Court on the 27th day of April, 2017

Date: 27/4/2017

Place: Navsari

(Ms. P. V. Pandya)

Principal Senior Civil judge,
Navsari.

GJ 00385