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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.6874-76 of 2000@@
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M/s. Shervani Charitable Trust, U.P. & Ors. ...Appellant (s)

Versus~

Commissioner of Income Tax, U.P.Respondent (s)

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These civil appeals were heard on a previous occasion for some time and adjourned to enable the appellants to produce a copy of the original Trust Deed, a copy of the plaint in the civil suit and a copy of the decree that was passed thereon. These have been placed on record. The appellants' counsel, having addressed us for some time, has now sought leave to withdraw the appeals. We have told him that we would do so subject to recording our observations and making an order for costs. Learned counsel has pressed for withdrawal, even so.

The Trust Deed, as it was original settled, contemplated that the trustees would expend the income of the trust, after defraying its expenses thus: (a) 1/3rd on genuine charitable objects; (b) 1/3rd on the maintenance and support of the members of the settlor's family and relatives; ...2/-

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and (c) for remuneration to the trustees. A resolution was passed by the trustees thereafter which sought to alter the latter two clauses afore-mentioned. There were several income tax proceedings culminating in an application before the Settlement Commission. Pending the hearing of that application, a civil suit was filed seeking to rectify the Trust Deed so as to efface the effect of the aforesaid latter clauses (b) and (c). The suit was filed by one surviving settlor and the trustees to the suit. Several relatives of the settlor were made defendants, as also two members of the public in a representative capacity. The basis of the suit was that the intention of the settlors was not correctly set out in the Trust Deed. Written statements were filed and all the defendants did not raise any objection to the suit being decreed. Accordingly, without recording any evidence, this order was passed on the suit:

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"Suit for rectification of the deed of Trust of Shervani Charitable Trust dated 13.4.56 is hereby decreed in accordance with the rectification deed, Annexure B to the plaint. The said Annexure B to the plaint shall form a part of the decree."

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On the basis of this decree, the Settlement Commission quashed the orders that had theretofore been passed by the Income Tax authorities. A special leave petition against the order of the Settlement Commission was dismissed on three ..3/-

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grounds, namely, the amendment of the Trust Deed, that the money had in fact been spent on charitable purposes in the assessment years in question and the amounts involved were very small.

We are in no doubt, on the facts, that a fraud was played by the rectification of the Trust Deed by altering the very object of the Trust. To be sure, we had asked for a copy of the Trust Deed, the plaint and the order thereon to be produced.

We are satisfied that the Trust Deed must be read as it originally stood and that that is the manner in which the appellant Trust should now be assessed. Whatever we have said shall not affect the assessment proceedings that have already become final.

On the application of learned counsel for the appellants, the civil appeals are dismissed as withdrawn. The appellants shall pay to the respondents costs quantified in the sum of Rupees fifty thousand.

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.....J.
(S.P. Bharucha)@@
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.....J.
(Y.K. Sabharwal)@@
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.....J.
(Brijesh Kumar)@@
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New Delhi,
October 09, 2001.