IN THE HIGH COURT OF SINDH, KARACHI
Suit No.875 of 2005

Plaintiffs	:	Narayana Kevalram Shahani, through Mr. Syed Khalid Shah, Advocate.
Defendants No. 1 to 3	:	Shyam Prem Shahani, Jitendra Prem Shahani and Mrs. Rajkumari Prem Shahani, through Mr. Shahid Ali Ansari Advocate
Defendant No. 4.	:	Ms. Bina Navani (Nee Bina Shahani) Ex-parte.
Applicant	:	Raju Bhagwan Bhutani, through Mr. Aziz-ur-Rehman Akhund, Advocate.

Date of hearing : 19.08.2020
Date of order : 19.08.2020

ORDER

ZAFAR AHMED RAJPUT, J:- By this order, I intend to dispose of C.M.A. No.12234 of 2013, filed by the applicant Raju Bhagwan Bhutani S/o late Narayana Kevalram Shahani, under Order 1, rule 10 read with section 151, C.P.C., to add him in this suit as the co-plaintiff.

2. The application was filed on 02.11.2013, thereafter vide order, dated 23.01.2018, learned counsel for the applicant was directed to satisfy the Court as to its maintainability in view of the prayer clauses as apparently, except prayer clause 'B', all are regarding a private Trust, namely, Diwan Metharam Dharmada Trust *("the Trust")* and in respect thereof the plaintiff has sought declarations.

3. Learned counsel for the applicant states that Mrs. Geeita Shahani is the real mother and attorney of the applicant, who was born from her first husband late Bhagwan Bhutani, later he was given orally in adoption to the deceased plaintiff Narayana Kevalram Shahani by her before solemnizing marriage with him on 15.8.1985 in London. Subsequently, on 29.8.2006, a Declaration of Adoption was executed by and between the deceased plaintiff, being adoptive father, his wife

Geeita Shahani, being mother, and applicant being adopted son, confirming the factum of adoption as mentioned therein, and the same was duly registered at No.487 with Sub-Registrar-II, Saddar Town, Karachi on 29.8.2006 and; hence, by virtue of the said Declaration of Adoption, the adopted son/applicant has acquired all the rights of a natural son of the adoptive father being his legal heirs. He has added that under Hindu Personal Law an adopted son would be treated like a biological son in the family into which he was adopted and would be considered as a descendant; hence, after the death of plaintiff/adoptive father, the applicant should be allowed to join the suit as the co-plaintiff.

4. On the other hand, learned counsel for the defendant Nos. 1 to 3 has maintained that the instant application is not maintainable in law in view of para-13 of the plaint and clause 11 of the Trust. He has also maintained that the alleged Deed of Adoption is extremely doubtful even otherwise, the applicant is stranger to the Trust; hence, the application is liable to be dismissed.

5. Learned counsel for the plaintiff; however, has recorded his no objection for the grant of this application.

6. Heard the learned counsel for the parties and perused the material available on record.

7. So far the status of a adopted son as of a biological son under Hindu law is concerned, it may be observed that under Hindu law adoption has the effect of transferring the adopted son from his biological family into the adoptive family. It confers upon the adopted son the same rights and privileges in the family of the adopter as a legitimate biological son would have had. After the adoption, adopted son lost all the rights of a son in his biological family including right of

claiming any share in the estate of his biological father or relations, or any share in the coparcenary property. The only cases in which the adopted son is not entitled to the full rights of a biological son in the adoptive family are; (i) if a son is born to the adoptive father after the adoption; and (ii) if a boy is adopted by a disqualified heir. Further, subject to no son having been born to the adoptive father after the adoption, an adopted son is entitled to inherit in the adoptive family as fully as if he were a biological son, both in the paternal and in the maternal line. Similarly the adoptive father and his relation are entitled to inherit from adopted son, as if he were a son born in the adoptive family. Hence, it can be inferred from the above that for all intents and purposes, the adopted son would have status as a biological son in the family into which he is adopted and he would be considered as a descendant of the family. Reliance in this regard may be placed on the commentary of Chapter XXIII, Eighteenth Edition (2001) of Mulla's Hindu Law respecting to the Adoption.

8. So far the joining of the applicant in this suit as co-plaintiff is concerned, it depends upon the nature of the suit and pleadings of the plaintiff.

9. It may be examined that the deceased plaintiff Narayna Kevalram Shahani filed this suit for declaration and permanent injunction alleging therein that he and his real elder brother Prem Kevalram Shahani were the joint trustees of the Trust authored, created and settled by their grandfather Dayaram Gidumal Shahani in April, 1911 at Hyderabad, Sindh in respect of his urban and rural properties in Karachi, Hyderabad and Badin. It was further alleged that the said trustees were also holding separate and personal properties and assets. Later, Prem Kevalram Shahani having died on 19.11.2002 left behind him the defendants as his surviving legal heirs. It is also alleged that

mostly there had been a sole trustee; firstly, such trustee was the author himself till 25.10.1920; secondly, Diwan Sherumal Chainrai, the nephew and appointee of the said author, vide Deed of Appointment in Execution of a Power, registered at No. 1373 with Sub-Registrar, Hyderabad on 20.10.1920; thirdly, Kevalram Dayaram Shahani, the author's son, nominated through instrument of the Trust, on the demise of the author on 07.12.1927; fourthly, the plaintiff and his deceased brother Prem Kevalram Shahani, by nomination vide "Last Will and Testament of Kevalram Dayaram Shahani", who died on 16.01.1986. As such, the plaintiff and his said deceased brother were the joint trustees of the Trust. It was claim of the plaintiff that after the demise of his brother Prem Kevalram Shahani, on 19.11.2002, he was the sole trustee as he was left alone; moreover, there was no will of deceased Prem Kevalram Shahani for such purpose, and no Deed of Appointment by the plaintiff or his deceased brother was made appointing the defendants No.1&2 as trustees. It was case of the deceased plaintiff that the defendants No.1&2 were denying and were interested to deny the status and right of the plaintiff as sole trustee of the Trust as they were self-styled trustees and pretending and posing to be the trustees of the Trust in place of their deceased father, whose office as trustee was vacated on his death and was not heritable. It was further case of the plaintiff that the defendants No.1&2 had caused a notice published in Part-II of the Sindh Government Gazette, dated 2.10.2003, and Gazette of Pakistan on 15.10.2003 assuming the office of trustees, and since this concept was alien to the law relating to trusts, the plaintiff filed this suit with the following prayers:-

A. *Declaring that on the sad demise on 19.11.2002 night of Prem Kevalram Shahani son of late Kevalram Dayaram Shahani, the defendants, namely Mr. Shyam Prem Shahani, Mr. Jitendra Prem Shahani, Mrs. Rajkumari Prem Shahani and Ms. Bina Navani (nee Ms. Bina*

Shahani) are the only legal heirs of Prem Kevalram Shahani in respect of his personal properties and estate.

B. Declaring that in case of demise of the plaintiff none amongst the defendants shall have any right, title or interest in the plaintiff's personal properties and estate.

C. Declaring that the plaintiff is the sole surviving trustee of Diwan Metharam Dharmada Trust since 20.11.2002.

D. Declaring that notices dated 20.11.2002 published in Sindh Government Gazette and Gazette of Pakistan on 2.10.2003 and 15.10.2003, copies attached and marked "E" and "F" respectively are void ab initio and in toto.

E. Restraining the defendants No.1&2, namely; Shyam Prem Shahani and/or Jitendra Prem Shahani, his/their agents and employees from pretending or posing to be the trustee(s) of Diwan Metharam Dharmada Trust and from interfering into the affairs of the trust, its properties and assets throughout the Province of Sindh.

10. It may be relevant to observe here that after filing of the suit plaintiff died on 30.12.2010; hence the suit was disposed of on being abated by this Court, vide order dated 08.04.2011. Subsequently, the widow of plaintiff, namely, Mrs. Geeita Shahani, the real mother and attorney of the applicant, filed C.M.A. No. 4984/2011, under Section 114, C.P.C., which was allowed by this Court vide order dated 13.12.2012 and, consequently, the suit was restored. Later, Mrs. Geeita Shahani, filed C.M.A. No. 1136/2013 to implead her as legal representative of the deceased plaintiff being his widow, the same was also allowed, vide order dated 02.10.2015.

11. From the pleadings as well as prayer clause, it is crystal clear that except prayer clause (B) all are regarding the Trust and in respect thereof the plaintiff has sought declarations. So far the question of succession of the Trust is concerned, it may be relevant to reproduce

here clause 11 of the instrument of the Trust, as amended vide Supplement to a Document Promulgating a Public Charitable Trust, registered on 29th September, 1920 at No. 1242, with Sub-Registrar, Hyderabad, as under:-

> *"For facility of administration, the trustee should be the person who can also administer the property, mentioned in Cause 2 (the details of which are given in Schedule 111), and can do good deeds out of the savings of the property. For this reason, when I established this public charitable trust by means of book-entries, which said trust is now to be promulgated by registering this document, then, exercising my power according to law, I made myself a trustee, and, so long as I am alive, I shall continue to be trustee. If, however, unforeseen circumstances make it necessary or desirable for me to resign my office of trustee during my life, it will be open to me, by a registered document, to appoint a trustee or trustees in my stead, and to make such provisions as may prevent the office remaining vacant during my life time, or after my death pending the assumption of the office by the person entitled under the original deed, without prejudice, however, to the powers reserved to me as author of the Trust. After my decease, if I appoint no other trustee, my son Kevalram shall be trustee, provided he is not a minor at the time. If he is a minor, he shall be trustee on the termination of his minority, and, during his minority, he whom I may appoint guardian of his property, or who may be appointed, according to law, shall be trustee. Similarly, if Kevalram, before his decease, appoints no trustee and leaves male issue, that issue shall be trustee, and if there is more than one son, all of them shall be trustees and shall divide the work or fix turns, provided they are fit (for the office of trustee), and similarly, <u>from generation to generation</u>, there shall be such trustees, provided they are fit (for the office). If there is no male issue, or if there is, but is not fit (to be trustee), then the method mentioned in clause 10 should be adopted for filling the office of trustee".*
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> (Emphasis supplied)

Later, by Appointment in Execution of a Power, registered on 25th October, 1920 at No. 1340, with Sub-Registrar, Hyderabad, following Clause 11 A, besides Clauses 11 B and 11 C, was inserted in original deed by the author:

> *"No woman is ineligible for the office of trustee, merely on account of her sex, and in all passages about the trustees, the masculine includes the feminine. There is to be no sex bar, or bar of caste, race or religion, character, training, attainments, experience, practical ability, diligence, tact and sweet reasonableness are more importance, and all these and other things being equal, a person who has the necessary leisure and is willing to undertake the office of trustee as a labour of love at a considerable sacrifice, is to be preferred".*

12. From the plane reading of the above, it may be conceived that the will of the author/founder of the Trust, conferred trusteeship after his death on either by appointment of serving trustees or from his issues from generation to generation. Phrase "generation to generation" used in above clause 11 of the instrument of the Trust appears to be very significant for the appointment of the trustee; hence, it requires due deliberation. In Black's Law Dictionary, word *"generation"* has been defined as (i). A single degree or stage in the succession of persons in natural descent. (ii). The average time span between the birth of parents and the birth of their children. As per Words and Phrases, Volume 18, word *"generation"* means a single succession of living beings in natural descent. It has also been specified that as the word *"generation"* has no technical meaning, we must consider it as used in the sense of a succession. According to Corpus Juris Secundum, Volume 38, the term *"generation"* may be used technically in the sense of a degree of removal in computing descents, but used in the sense of succession, its ordinary import, it's not a technical word, and has been defined as single succession of living beings in natural descent. Hence, there appears

unanimity on connotation of term *"generation"* as succession of persons in natural descent.

13. It may also be relevant to observe here that a private trust in so far as it is charitable, is the "creature of the founder". The founder may accordingly provide for the administration of his creature. In the case of *K. Manathunainatha Desikar n. Sundaralingam and others* (AIR 1971 Madras) Full Bench of Madras High Court has held that when a founder on making dedication of his property provides for the management of the property by persons in succession in a manner which according to him is best fitted and proper in the interest of the foundation, he creates an office of perpetual obligation to the endowment to enure as long as the endowment lasts. Perusal of the above clause 11 of the instrument of the Trust, which provides expression "generation to generation", leaves no doubt in a prudent mind that the author/founder of the Trust intended to provide a scheme of his biological heritable successive trustees to the administration of his Trust. In the instant case, the applicant/intervener is admittedly not the issue from the generation of the author/founder of the Trust who conferred trusteeship on his natural descendants, and clause 11 of the Declaration of the Trust does not confer trusteeship on adoptive son. This fact was perhaps well within the knowledge of deceased plaintiff who in para No.13 of the plaint clearly pleaded that he did not have a son of his own nor intends to introduce one from outside into the private trust established by his grandfather out of properties and assets of his forefather. Hence, the applicant/intervener is a stranger to the Trust, which is the subject matter of this suit.

14. So far prayer clause (B) is concerned, it relates to the personal properties and estate of the deceased plaintiff, which admittedly he has already bequeathed to his wife Mrs. Geeita Shahani vide Last Will And

Testament, registered on 17.09.2005 at No. 06 with Sub-Registrar T. Div. II, Karachi and she is contesting the suit as legal representative of the deceased plaintiff. As such, the applicant/intervener is neither necessary nor proper party to join the suit. Accordingly, C.M.A. No. 12234 of 2013 is dismissed with no order as to costs.

15. Above are the reasons of my short order, dated 19.08.2020, whereby the application under reference was dismissed.

JUDGE

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