

**Bilasrai Joharmal and another** - - - - - *Appellants*

*v.*

**Shivnarayan Sarupchand and others** - - - - - *Respondents*

FROM

**THE HIGH COURT OF JUDICATURE AT BOMBAY**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 21ST DECEMBER, 1943**

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*Present at the Hearing:*

LORD ATKIN

LORD PORTER

SIR GEORGE RANKIN

[*Delivered by* SIR GEORGE RANKIN]

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The appellants on 2nd September, 1939, with the sanction of the Advocate General, brought a suit on the Original Side of the High Court at Bombay under section 92 of the Code in respect of a public charity. The charity concerned is a hospital at a town in the Jaipur State called Bagar. It was established in 1926 for providing medical relief to the poor and was called Shivnarayan Joharmal Bagar Hospital. The plaintiff asked that the defendants, who were five in number, should be removed from their office as trustees and that new trustees be appointed by the Court. It also asked for accounts to be taken of the defendants' management, on the footing that they had been guilty of misapplying the funds of the trust; but it is now plain that this allegation is wholly without substance and that the sole ground of complaint is that the defendants have without authority changed the name of the hospital to Shivnarayan Chiranjilal Rungta Hospital and are employing this new style both in bills, papers and labels of the hospital and on the rent notes issued in respect of the property in which the funds are invested.

The learned trial Judge, Chagla J., by his decree of 10th October, 1941, removed the trustees and appointed new trustees. He directed the defendants to hand over to the new trustees the trust properties in their possession, together with all the books of account, papers, vouchers, documents, etc., relating to the hospital, but the decree contains no provision giving relief against misapplication of trust monies and no direction for accounts. On appeal Beaumont C.J. and Somjee J. set aside this decree and dismissed the suit; and from their decree dated 19th March, 1942, this appeal is brought.

The first defendant is Shivnarayan, and Joharmal is the name of his brother. Rungta is their family name. Bilasrai, the first plaintiff, is one of the two sons of Joharmal—the other, Govindram, having been given in adoption to Shivnarayan, whose only son Chiranjilal died in 1922. Shivnarayan and his brother are natives of Jaipur and come from Bagar. Both plaintiffs are described in the cause title as "of Bagar".

The history and nature of the charity is sufficiently disclosed by two deeds. The first is dated 21st April, 1936, and recites that in or about 1926 Shivnarayan had set apart the sum of one lac for the purpose of

establishing and maintaining a hospital at Bagar and that the sum standing to the credit of the fund with the family firm had increased to Rs.1,42,079. It provides that Shivnarayan (the first defendant), Bilasrai Joharmal (the first plaintiff), Bholaram Hardatrai and Onkarmal Pannalal (defendants 3 and 4), together with one Brijlal Ramjidas, should be trustees. They were to apply the trust monies in establishing and maintaining " a hospital or hospitals in Bagar or elsewhere for providing free medical aid to the poor people ". The third clause was as follows:

" 3. The said trust moneys, securities, investments and the properties forming part of the trusts shall be called Shivnarayan Juharmal Bagar Hospital Trust Fund and the hospital or hospitals established by the trustees out of the trust funds shall be called Shivnarayan Juharmal Bagar Hospital or Hospitals. The said trust moneys, securities, investments etc., shall be kept in the said Shivnarayan Juharmal Bagar Hospital account."

The second deed is dated 12th May, 1939. It recites that Brijlal Ramjidas and the plaintiff Bilasrai Joharmal had resigned from the trusteeship, that pursuant to a decree of the High Court at Bombay dated 15th October, 1937, certain immovable property in Bombay known as Chowpatty Chambers had in 1938 been acquired for the trust as an investment of its funds, and that in addition to this property the trust was possessed of Rs.81,800 in deposit with a Calcutta firm. By the operative clauses of this deed Shivnarayan Bholaram and Onkarmal appoint as new trustees Hariram Banarsidas and Motilal Nath (defendants 2 and 3 in the present suit). This deed ends by providing:

" And whereas the whole of the moneys subject to the trusts of the said deed poll deed of trust were contributed by the said Shivnarayan Sarupchand alone and the said Shivnarayan Sarupchand has requested the continuing and the new trustees that the charities created thereunder should henceforth be known by the name of ' The Shivnarayan Chiranjilal Rungta Hospital Charities ' the continuing and the new trustees hereby declare that the name of the charities created by and subject to the trust of the said deed poll deed of trust shall henceforth be and be carried on in the said name of ' Shivnarayan Chiranjilal Rungta Hospital Charities. ' "

From the plaint (para. 4) it would appear that for some time the family name " Rungta " had been used instead of the word " Bagar " in the title. However that may be, the effect of the change proposed by the deed of 1939 was to remove the name of " Joharmal " from the title of the charity and to put in its place the name of " Chiranjilal ", the deceased son of Shivnarayan. That this should give offence to Joharmal and his son Bilasrai was perhaps only to be expected. Shivnarayan by his written statement makes the case that when he first provided the sum of one lac to found the charity he included his brother Joharmal's name in its title because Joharmal promised to contribute to its funds equally with himself. Of this allegation, however, there is no proof; but it is clear that while Joharmal is a co-owner of the site on which a hospital in Bagar has been built, Shivnarayan is the founder of the charity and has out of his own funds endowed it with large sums. A new hospital has been built and equipped at Bagar at a cost to Shivnarayan of some four lacs, and in addition thereto three lacs have been invested by him on behalf of the trust in property in Bombay. His removal from the office of trustee is therefore a drastic measure not readily to be justified in the interests of the charity or of the poor of Bagar.

The learned trial Judge refused to apply the principle that he ought not to interfere in the administration of a charity which is carried on within the borders of an independent State. He appears to have accepted as well settled the rule that if the Court is not in a position to supervise the carrying out of a charity it will not frame a scheme in respect of that charity but will take such steps only as are necessary to safeguard such trust funds as lie within the jurisdiction. (*Advocate General v. Bai Punjabai*, 1894, I.L.R. 18 Bom. 551; *Kanji v. Advocate General*, 1915, 18 Bombay Law Reporter 60.) But he took the view—somewhat unreasonably, as their Lordships think—that if the name was changed without proper authority the application of the hospital funds to the hospital was a

misapplication of those funds and amounted to a breach of trust which required the Court to safeguard them. Further, he took strong exception to the defendants' conduct, in that on the 13th February, 1941—that is, pending suit—they had presented a petition to the Jaipur "Court of Nizamut Shekhawati" asking that the change of name might be ratified and confirmed. While acquitting them of dishonesty or moral turpitude, he suggested to their counsel that if they were prepared to resign he "might consider the question of condoning their breach of trust", and as this was not acceded to he removed them from office. In their Lordships' view this method of dealing with the matter is open to serious criticism even on the assumption that the defendants' conduct amounted to a breach of trust which the Court was called upon to correct. If the learned Judge had ordered the defendants to restore the original name they might or might not have obtained a stay of his order and appealed from it. If they failed to comply with it a motion to remove them or to commit them could have been made in due course and upon proper materials. But to require them to resign, and on their refusal to direct their removal from office was to take action far in excess of anything that was called for. The defendants' refusal to resign added nothing whatever to the case against them.

Their Lordships agree with the Appellate Bench in holding that the petition to the Jaipur tribunal was not an act in defiance of the High Court of Bombay; that a charity does not change its nature merely by a change of name; and that on any view the change of name was not such a serious breach of trust as to justify the removal of the trustees. The learned Chief Justice further observed:—

"Now, this charity, as appears from the plaint, is a foreign charity. It conducts a hospital in Jaipur State, and it is a well established principle that the administration of a charity depends upon the law, and is controlled by the Court, of the country where the charity is conducted. In my opinion, there is no jurisdiction in this Court to remove trustees of a charity functioning in Jaipur State, and to appoint new trustees of that charity."

The correctness of this view of the law has been challenged in argument by Sir Herbert Cunliffe on behalf of the appellants, who has insisted on the facts that the trust was originally created in Bombay with monies then lying in Bombay; that these were invested in Bombay property pursuant to an order of the High Court of Bombay; and that the breaches of trust complained of had been to some extent committed in Bombay in connection with the rent notes and other papers. He pointed also to the words "hospital or hospitals in Bagar or elsewhere" which appear in the first clause of the deed of 21st April, 1936.

It does not appear that any objection was taken at the trial to the jurisdiction under clause 12 of the High Court's Letters Patent, and their Lordships are satisfied that there was no defect of jurisdiction in that sense. As a Court of Equity acts *in personam* it may and sometimes does exercise its jurisdiction over trustees and others in respect of foreign land and otherwise in connection with rights to property situated abroad. The question here, however, is as to the principles which the Court will observe in taking upon itself to interfere with the administration of a charity when that charity has to be conducted in a foreign country and the Court is for that reason in no position to supervise its administration effectively. That the Court will protect and preserve the funds of the charity by the exercise of its jurisdiction over the trustees or other persons is very certain. But the proper conduct of the charity and the giving of any necessary directions for that purpose are another matter. In this case the Court was asked to make an order which affected the administration of the charity at every point—namely an order for the removal of the persons who were conducting the management of the hospital and for the transfer to other persons of the land and buildings at Bagar as well as of the immovables in Bombay in which the money of the charity was invested. The words "or elsewhere" in the deed of 1936 do not seem to be important for the present purpose, seeing that the only hospital belonging to the trust was



at Bagar and that no other charity was being conducted by the trustees. Once it is admitted that part of the cause of action arose within the jurisdiction so as to satisfy the requirements of clause 12 of the Letters Patent, no great importance attaches to the place where the trust was created or its money invested, if there is no question of preserving or recovering its property and if the only question is as to the country whose Courts should supervise the conduct of the charity and the application of its funds. The jurisdiction of the Court to remove trustees, as Lord Blackburn said in *Letterstedt v. Broers* (1884) L.R. 9 App. Cas. 371, 386-7, "is merely ancillary to its principal duty, to see that the trusts are properly executed". And he added that "in exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle . . . that their main guide must be the welfare of the beneficiaries". The learned Chief Justice has pointed out that no evidence was given upon the question whether the law of the Jaipur State permitted trustees to alter the name of a charity such as this without the order of a Court; and that if any Court can sanction such a change or condone the action of the trustees in making it, the proper Court for the purpose must be that of the Jaipur State. The case is not one of founding a charity abroad, or settling a scheme for a charity to be conducted abroad, nor of preserving the property of a foreign charity, nor of assisting a foreign charity or a foreign Court to collect or administer funds within the jurisdiction. Their Lordships cannot doubt that upon settled principles it was a correct exercise of discretion by the High Court of Bombay that it should leave the plaintiffs to their remedy from the Courts of the country in which this hospital is carried on and whose poor are the beneficiaries of the charity. It would be plainly inconvenient if not intolerable that the Courts of a foreign country should interpose their authority upon particular questions arising in the course of administering such a trust—acting intermittently according as they may be invoked by particular complainants in preference to the Courts of the country in which the charity was meant to operate, and enforcing their orders by removing the trustees and entrusting to others the management of all the charity and its affairs.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the costs of the respondents 1, 3, 4 and 5.

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DELIVERED BY SIR GEORGE RANKIN

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