

ROYAL COURT
(Samedi Division)

37.

26th February, 1997

Before: The Judicial Greffier

In the Matter of the Representation of Surinderpal Singh Bhandher

Between	Surinderpal Singh Bhandher	Representor
And	Barclays Private Bank and Trust Company Limited	First Respondent
And	Sukhdev Kour Bhandher nee Kour	Second Respondent
And	Jasvir Kour Girawal nee Bhandher	Third Respondent
And	Rupinderal Singh Bhandher	Fourth Respondent
And	Nuvinderal Singh Bhandher	Fifth Respondent
And	Charnjit Kour Bhandher	Sixth Respondent

Application by the First Respondent for directions to be given concerning the conduct of these proceedings, the parties to be convened, the pleadings to be filed and all matters incidental thereto.

Advocate P.C. Sinel for the Representor.
Advocate G.R. Boxall for the First Respondent.

JUDGMENT

5 THE JUDICIAL GREFFIER: This matter came before me on the afternoon of 14th February, 1997. At that date the First Respondent was the only party joined as a Respondent to these proceedings. The Representation concerns monies which the Representor claims belong to him and which were placed in an account held jointly between the Representor and his late father. In April, 1988, the Representor's father purported to set up a trust known as the Desmash Trust which had as its beneficiaries, or potential beneficiaries, various members of the Representor's father's family. In the Representation the Representor claims that this trust was not properly set up as the monies which were placed in it were actually beneficially owned by himself. Alternatively,

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the Representor alleges that the monies are held on the trust and is seeking a capital advancement to himself of £55,000 by the First Respondent which is the trustee.

5 The procedural issues before me hinged upon the issue as to
the nature of these proceedings. The Representor wanted me to
treat these proceedings as being an application under Article 47
of the Trusts (Jersey) Law, 1984, as amended, and wanted to be
10 able to proceed with a minimum of delay by filing an affidavit in
support of the Representation. The First Respondent, on the other
hand, denied that this was an application under Article 47 of the
Trusts Law and wanted to be able to place the Representation on
the pending list, to have the Second to Sixth Respondents joined
15 as parties to the proceedings with an appropriate return date
being set and for there then to be pleadings filed by the First
Respondent and by any other Respondent who wished so to do. The
Second to Sixth Respondents are other members of the family who
are beneficiaries or potential beneficiaries of the Desmash Trust.
20 The Representor, on the other hand, simply wanted the Second to
Sixth Respondents to be notified of the Representation so that
they could take action in relation thereto if they thus thought
fit. Paragraphs 1 and 2 of the Prayers of the Representation
sought the provision of accounts and copies of all underlying
25 documentation to which the Representor is entitled at law from the
First Respondent. It seemed to me that that was a matter that
could be dealt with expeditiously and without involving any other
parties and so I ordered that a date be fixed as soon as possible
for the hearing of those Prayers and of any applications for costs
in relation thereto before the Royal Court.

30 Article 47(2) of the Trusts (Jersey) Law, 1984, as amended,
commences as follows:-

15 "(2) The court may, if it thinks fit -

 (a) make an order concerning -

 (i) the execution or the administration of any
trust; or

0 (ii) the trustee of any trust, including an order
relating to the exercise of any power,
discretion or duty of the trustee, the
appointment or removal of a trustee, the
remuneration of a trustee, the submission of
accounts, the conduct of the trustee and
5 payments, whether payments into court or
otherwise;

 (iii) a beneficiary or any person having a
connexion with the trust;

 (iv) the appointment or removal of an enforcer in
relation to any non-charitable purposes of
the trust;".

Paragraph (3) of Article 47 reads as follows:

5 "(3) An application to the court for an order or
 declaration under paragraph (2) may be made by the
 Attorney General or by the trustee, the enforcer or
 a beneficiary or, with leave of the court, by any
 other person."

10 The question which I had to decide was whether this
Representation was an application to the Court for an Order under
paragraph (2) of Article 47 of the Trusts (Jersey) Law, 1984.

15 The difficulty which the Representor faces is that it is part
of his case that the Desmash Trust is invalid. It is the
Representor's case that the First Respondent holds the monies
either as a bare nominee for the First Representor, if the Desmash
trust is invalid, or as a trustee of that trust and that, in
either case, an application under paragraph (2) of Article 47 is
appropriate.

20 If the Representor had merely wanted to attack the validity
of the Desmash Trust then I would have expected him to do this by
means of an action brought by Order of Justice against both the
First Respondent and the other beneficiaries or potential
25 beneficiaries of the trust rather than by Representation. If the
Representor had sought merely an Order that the First Respondent
make a capital distribution to him out of the Desmash Trust then
it would be appropriate for this to be made by Representation
under Article 47 of the Trusts (Jersey) Law, 1984, as amended, but
30 it would still be necessary for the other beneficiaries under the
Trust to be joined as parties to that application.

35 The difficulty here is that the Representor has attempted to
do both of these things together in one Representation. I have no
doubt that he has done this on the basis of seeking an Order for
capital distribution either because the trust is not valid or
under the terms of the trust. The difficulty that he has is that
he cannot, in my view, make an application under Article 47 of the
Law for a distribution from the Desmash Trust whilst denying the
40 existence thereof. Furthermore, he cannot, in my view, bring an
action to set aside the trust by Representation. Accordingly, I
decided that for as long as the allegations remain in the
Representation that the Desmash Trust is invalid the Representor
cannot make an application in relation to that trust under Article
45 47 of the Law. Accordingly, what the Representor is left with is
firstly a Representation alleging that the trust is invalid and,
secondly, if the Representor fails on this point, a potential
application for a distribution from the Desmash Trust.

50 Accordingly, I ordered:-

- (a) firstly, that the other family members be joined as additional Respondents to the parts of this Representation other than paragraphs (1) and (2) of the Prayer thereof;
- 5 (b) that on the application of the First Respondents the Representation be placed on the pending list as between the Representor and the First Respondent; and
- (c) by implication that the matter would proceed by pleadings, setting down, etc, to trial.

10 Finally, I made an Order that the costs of and incidental to the Summons for directions be costs in the cause.

Authorities

Trusts (Jersey) Law, 1984: Article 47.