

Charan Singh and Another

Vs

Darshan Singh and Others

Civil Appeal No. 505 of 1974

(K. K. Mathew, P. N. Bhagwati, N. L. Untwalia JJ)

17.12.1974

JUDGMENT

UNTWALIA, J. -

1. The plaintiffs respondents in this appeal filed by the defendants appellants by special leave of this Court from the decision of the High Court of Judicature of Punjab and Haryana filed a suit in the year 1963 against appellant No. 1 alone (for the sake of brevity described as the appellant hereinafter in this judgment) praying for a decree for permanent injunction against him to restrain him.

from interfering with the maintaining of the Guru Granth Sahib for religious recitals in the Darbar Sahib in the Dharamsala also known as Dharamsala Dera Baba Jaimal Singh situated in village Balsarai Tehsil and District Amritsar as also restraining him from interfering with the plaintiffs and other satsangis' rights of reciting the Guru Granth Sahib and holding and joining the religious congregations and Satsang in the above mentioned Gurudwara Baba Jaimal Singh.

2. About 70 years prior to the institution of the suit one Sant Baba Jaimal Singh used to reside and practise spiritual Sadhana at the place aforesaid. The residents of village Balsarai held him in great respect because of his high spiritual achievements and noble living. He got a Dharamsala built which came to be known as Gurudwara and according to the case of the plaintiffs Guru Granth Sahib was also installed there. The villagers gifted and dedicated 11 kanals, 16 marls of land out of village Shamilat to the Granth Sahib in the year 1897. Several persons succeeded as the Manager/Trustee or Head of the Institution so established one after the other after the demise of Sant Baba Jaimal Singh - the appellant being the last one at the relevant time. The plaintiffs who filed the suit in a representative capacity on behalf of the devotees of the Gurudwara in the first instance had wanted to institute the suit after obtaining the consent of the Advocate-General of Punjab in accordance with Section 92 of the Civil Procedure Code - hereinafter referred to as the code. But they failed to obtain the consent of the Advocate-General. Later on the plaintiffs instituted the suit endeavouring to frame it in such a manner so as to take it out of the ambit of Section 92 of the Code. The grievance of the plaintiffs in the suit has been that the appellant was committing a breach of trust by not using the Dera in general and Darbar Sahib in particular for the purpose for which the same was dedicated. He had started denying the rights of the people to the Dera and Darbar Sahib and Guru Granth Sahib asserting that allowing them to do so depend upon his sweet will and discretion. The plaintiffs, claiming a right in the institution for the Granth Sahib made a grievance that the appellant was interfering with their right and was not discharging his duties as he ought to do in accordance with the objects of the religious institution in question. In substance the relief claimed against the appellant is to prevent him from committing any breach of the trust and to

direct him to perform his duties as a Manager or Trustee of the religious institution to carry out its objects.

3. Several pleas were raised by the appellant in his written statement to resist the suit. Many of them were by way of preliminary objections to the maintainability of the suit. Tirlok Singh, appellant No. 2 and two others were added as defendants Nos. 2 to 4 in the suit at their instance. The Court of the Subordinate Judge, Second Class at Amritsar Framed as many as seven preliminary issue as to whether the suit was competent in the absence of the consent of the Advocate-General under Section 92 of the Code was decided against the plaintiffs. So the suit was dismissed. The facts that the institution was a public trust of a religious nature and that the suit had been filed by the plaintiffs in a representative capacity are no longer in dispute. One of the pleas taken by the appellant was that the suit was barred in view of the provisions of law contained in the Punjab Village Common Lands (Regulation) Act, 1961, Punjab Act No. 18 of 1961. But this plea was rejected by the trial Court. From the dismissal of the suit plaintiffs went up in appeal. The First Appellate Court affirmed the decision of the trial Court. They went up in a regular second appeal before the High Court A learned Judge of the High Court dismissed the plaintiffs' appeal on the ground that their suit was hit by Section 92 of the Code. One of the plaintiffs and two of the added defendants namely defendants Nos. 3 and 4 died during the pendency of the second appeal in the High Court. Their heirs were not substituted. The appellants' plea that the appeal had abated as a whole was not accepted by the learned Single Judge. He also held against him on the point of the suit being allegedly barred under Punjab Act 18 of 1961. On grant of leave under Clause 10 of the Letters Patent the case was taken further before the Letters Patent Bench. The Learned Judges constituting the Bench have allowed the Letters Patent appeal remitted back the case to the trial Court holding in favour of the respondents that the suit is not barred under Section 92 of the Code. The surviving two defendants have come up to this Court.

4. Mr. Bishan Narain, learned Counsel for the appellant, urged the following points in support of the appeal :

(1) The judgment of the High Court in relation to Section 92 of the Code is erroneous in law. The suit was barred under the said provision of the Code.

(2) The plaintiffs had no locus standi to institute the suit as the property of the institution vested in the Panchayat under Punjab Act 18 of 1961.

(3) On the death of one of the plaintiffs appellants during the pendency of the second appeal in the High Court the whole of the appeal abated and ought to have been dismissed as such.

5. The last two points may be shortly disposed of as they have to be stated merely to be rejected. Point No. (2) was eventually given up as it was completely devoid of substance. Since the suit had been filed in a representative capacity, it is clear that on the death of one of the plaintiffs it did not abate. In *Raja Anand Rao v. Ramdas Daduram* (48 IA 12 : AIR 1921 PC 123 : 62 IC 737) it has been said by Lord Dunedin at page 16 :

There was also a point that the person who originally raised the suit and got the sanction having died the suit could not go on, but there does not seem any force in that point either, it being a suit which is not prosecuted by individuals for their own interests, but as representatives of the general public.

It is plain that the second appeal did not lose its competency on the death of one of the plaintiffs appellants. The only point which requires discussion and determination in this appeal is whether the suit filed by the plaintiff was barred under sub-section (2) of Section 92 of the Code.

6. It is well-settled that a suit of the nature envisaged by Section 92(1) of the Code to obtain a decree for any one or more of the reliefs enumerated in clauses (a) to (h) of the code has to be filed by the Advocate-General or two or more persons having an interest in the trust with the consent in writing of the Advocate-General. Sub-section (2) provides that save under certain circumstances.

. . . no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

Out of the three conditions which are necessary to be fulfilled for the application of Section 92, two are indisputably present in this case viz. (1) the suit relates to a public charitable or religious trust; (2) it is founded on an allegation of a breach of trust and the direction of the Court is required for administration of the trust. The debate and dispute between the parties centered round the requirement of the fulfillment of the third condition namely whether the reliefs claimed are those which are mentioned in sub-section (1) of Section 92 of the Code. A suit may be instituted under Section 92(1) to obtain a decree -

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

7. The High Court in the Letters Patent appeal has taken the view that the relief sought for in the suit does not fall under any of the clauses (a) to (h) of Section 92 of the Code. Learned Counsel for the appellant has assailed this view and submitted that the relief sought for falls under clause (e) or (g) or in any event under clause (h). In our judgment the relief sought for in this case does not strictly or squarely fall within clause (e) or (g) but is very much akin to either and hence is covered by the residuary clause (h).

8. Lord Sinha delivering the judgment of the Judicial Committee of the Privy Council in *Abdur*

Rahim v. Syed Mahomed Barkat Ali Shah (AIR 1928 PC 16 : 55 IA 96 : 108 IC 361) rejected the argument that the words "such further or other relief as the nature of the case may require" occurring in clause (h) must be taken, not in connection with the previous clauses (a) to (g) but in connection with the nature of the suit. The argument was that any relief other than (a) to (g) in the case of an alleged breach of an express or constructive trust as may be required in the circumstances of any particular case was covered by clause (h). It was repelled on the ground that the words "further or other relief" must on general principles of construction be taken to mean relief of the same nature as clauses (a) to (g). It would be noticed that the word used after clause (g) and before clause (h) is "or". It may mean "and" in the context, or remain "or" in the disjunctive sense in a given case. If any further relief is asked for in addition to any of the reliefs mentioned in clauses (a) to (g) as the nature of the case may require, then the word "or" would mean "and". But if the relief asked for is other relief which is not by way of a consequential or additional relief to any of the reliefs in terms of clause (a) to (g), the word "or" will mean "or". The other relief however, cannot be of a nature which is not akin to or of the same nature as any of the reliefs mentioned in clauses (a) to (g). According to the plaintiff's case one of the objects of the religious trust was the worship of Granth Sahib and its recital in congregations of the public. In the suit a decree declaring what portion of the trust property should be allocated to the said object could be asked for under clause (e). The plaintiffs could also ask for the settling of a scheme under clause (g) alleging mismanagement of the religious trust on the part of the trustees. In the settlement of the scheme could be included the worship and recital of Granth Sahib - the holy Granth. The plaintiffs in their plaint did not in terms ask for the one or the other. They, however, alleged acts of breach of trust. Mismanagement, undue interference with the right of the public in the worship of Granth Sahib. They wanted a decree of the Court against the appellant to force him to carry out the objects of the trust and to perform his duties as a trustee. Reading the plaint as a whole it is not a suit where the plaintiffs wanted a declaration of their right in the religious institution in respect of the Granth Sahib. But it was a suit where they wanted enforcement of due performance of the duties of the trustee in relation to a particular object of the trust. It is well-settled that the maintainability of the suit under Section 92 of the Code depends upon the allegations in the plaint and does not fall for decision with reference to the averments in the written statement.

9. In *Mahant Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai* (1952 SCR 513 : AIR 1952 SC 143 : 1952 SCJ 224) it was pointed out at page 517 by Mukherjea, J., as he then was, speaking for the court :

A suit under Section 92, Civil Procedure Code, is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the court are necessary for the administration thereof, and it must pray for one or other of the reliefs that are specifically mentioned in the section. It is only when these conditions are fulfilled that the suit has got to be brought in conformity with the provision of Section 92, Civil Procedure Code. As was observed by the Privy Council in *Abdur Rahim. Barkat Ali* (supra), a suit for a declaration that certain property appertains to a religious trust may lie under the general law but is outside the scope of Section 92, Civil Procedure Code.

In a very recent decision, this Court speaking through one of us (Mathew, J.) in the case of *Swami Paramatmanand Saraswati v. Ramji Tripathi* ((1972) 2 SCC 695) has reiterated the same view in paragraph 10 at page 699 wherein it has been further added :

It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff

had not made out a case for any direction by the court for proper administration of the trust, the very foundation of a suit under the section would fail; and even if all the other ingredients of a suit under Section 92 are made out if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested then the suit would be outside the scope of section 92.

10. Mr. B. P. Maheshwari, learned Counsel for the respondents placed strong reliance upon a decision of the Patna High Court in Ganpat Pujari v. Kanaiyalal Marwari (AIR 1933 Pat 246 : 145 IB 294 : 14 PLT 768) and the decision of this Court Harendra Nath Bhattacharya v. Kaliram Das ((1972) 2 SCR 492 : (1972) 1 SCC 115). In the Patna case the first relief asked for in the suit was for an adjudication of the property in the suit belonging to the general public and for a declaration of their right to that effect. The Thakurbari in question was claimed to be a public property to which the entire Hindu community was entitled to go and worship. The appeal arising out of the suit came up before Wort and Fazl Ali, JJ. as they then were. There was a difference of opinion as to the application of Section 92 of the Code between them, the latter taking the view that Section 92 of the Code was not a bar. On reference to the third learned Judge, Kulwant Sahay, J. agreeing with the view of Fazl Ali, J. held that the relief claimed in the suit was not covered by clauses (a) to (h) of Section 92. The facts of the instant case are different and the Letters Patent Appeal Bench of the Punjab High Court committed an error in applying the ratio of the Patna case to the facts of the present case. In the case of Harendra Nath Bhattacharya v. Kaliram Das (supra), Grover, J. delivering the judgment of this Court referred to the analysis made by the High Court as to the reliefs claimed in the plain of that suit. In the main there were four reliefs as enumerated at pages 498 and 499 of the report (SCC p. 120) Reliefs Nos. (1)(2) and (4) were clearly outside the scope of Section 92 of the Code. Learned Counsel for the respondents submitted that reliefs No. 3 which was very much akin to the relief in the present suit was also held to be a relief not covered by any of the clauses of sub-section (1) of Section 92 of the Code. In our opinion the contention is not sound and cannot be accepted. The third relief in that case as analysed by the Court was in the following terms :

(3) For a declaration that the plaintiffs as Bhakats of the Satra were entitled to possess their own Basti and paddy lands and that they had a right to access to the use of the Satra for various religious purposes.

11. There were two parts of the said relief - one a declaration that the plaintiffs as Bhakats of the Satra were entitled to possess their own Basti and paddy lands and the other that they had a right to access to the use of the Satra for various religious purposes. Such a relief could not come under clause (h) because it was mainly concerned with the establishment of the rights of the plaintiffs in the lands as well as in the religious institution. In the plaint of the instant case the relief claimed is not primarily for the establishment of the right of the public to the religious institution. It recites the facts as to the right without mentioning any appreciable dispute concerning it, mainly alleges breach of duty on the part of the trustee and the plaintiffs seek the court's aid against the trustee for forcing him to discharge his obligations by due performance of his duties. In our judgment therefore the Courts below were right in taking the view that the present suit was a suit for a decree under Section 92 of the Code and since it was not filed in conformity with the requirement of the said provision of law it was not maintainable. The contrary view taken by the Division Bench of the High Court in the Letters Patent appeal is not correct.

12. In the result the appeal succeeds, the judgment of the High Court dated December 13, 1973 in

L.P.A. No. 573 of 1971 is set aside. In the circumstances, we make no order as to costs in this appeal.

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