

Shri Rikhu Dev, Chela Bawa Harjug Dass

Vs

Som Dass (deceased) Through His Chela Shiam Dass

Civil Appeal No. 159 of 1974

(CJI Ray, K.K. Mathew, V.V. Chandrachud JJ)

28.08.1975

JUDGMENT

MATHEW, J. -

1. This is an appeal by special leave against a decree passed by the High Court of Punjab and Haryana holding that the appeal filed by the plaintiff-appellant has abated and dismissing his suit.
2. The appellant brought the suit on the allegation that there was one Shiromani Nirankari Dera at Patiala, that this institution had two branches - One at Landeke in Moga tehsil and the other at Nanga Kheri in the erstwhile Patiala State, and that he, as mahant-in-charge of the Shiromani Dera at Patiala had the right to manage the properties attached to the Dera at Landeke. The prayer in the plaint was for recovery of possession of the Dera and the properties attached to it.
3. Som Dass, the defendant, contended that the Dera at Landeke was an independent Dera and that he was in possession of the properties of the Dera as its lawfully appointed mahant.
4. The trial Court decreed the suit. In appeal by the defendant the decree was reversed. Against the decree, an appeal was preferred by the appellant to the High Court. While the appeal was pending in the High Court, Som Dass, the defendant, died on October 3, 1970. No application was made by the appellant to bring on record his legal representatives within the period prescribed. An application was made on February 1, 1971 by the appellant stating that Som Dass died on November 26, 1970 leaving behind his Shiam Dass as his chela and for impleading him. The correctness of the date of death of Som Dass was contested by Shiam Dass. The High Court referred the question to the trial Court for enquiry and decision. The trial Court, after taking evidence, found that Som Dass died on October 13, 1970. Thereafter the appellant prayed before the High Court that his application dated February 1, 1971 might be treated as an application for setting aside the abatement of the appeal and the ground for setting aside the abatement was that the appellant did not know about the death of Som Dass at the time he died. The High Court found no substance in the plea that the appellant had no knowledge about the date of the death of Som Dass and held that the appeal had abated and that there was no ground for setting aside the abatement.
5. The appellant had raised an alternative contention before the High Court that there was no abatement of the appeal even if Som Dass was not impleaded within the period prescribed as he claimed to represent the Dera as its duly elected chela. The High Court held that after the death of Som Dass, Shiam Dass, as his chela.

inherited the sum-total of the rights which earlier vested in Som Dass and when a controversy is

raised about such rights, then the appellant was bound to bring on record the legal representatives of the deceased within the time prescribed by law.

6. We do not think that the view of the High Court was correct. The suit was filed on the basis that the appellant as the lawfully appointed mahant was entitled to manage the properties of the Dera at Landeke, that the defendant was unlawfully claiming to be the mahant of the Dera and entitled to manage the properties of the Dera and that the appellant was entitled to be in possession of the properties. As already stated the contention of the defendant was that though the properties belonged to the Dera, he was its lawfully appointed mahant and that the appellant had no right to recover possession of the property of the Dera. When Som Dass died, the interest which was the subject-matter of the suit, devolved upon Shiam Dass as he was elected to be the mahant of the Dera and the appeal could be continued under Order 22, Rule 10, of the Civil Procedure Code against the person upon whom the interest had devolved.

7. Order 22, Rule 10 reads :

R. 10. (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitled the person who procured such attachment to the benefit of sub-rule (1).

8. This rule is based on the principle that trial of a suit cannot be brought to an end merely because the interest of a party in the subject-matter of the suit has devolved upon another during the pendency of the suit but that suit may be continued against the person acquiring the interest with the leave of the Court. When a suit is brought by or against a person in a representative capacity and there is a devolution of the interest of the representative, the rule that has to be applied is Order 22, Rule 10 and not Rule 3 or 4, whether the devolution takes place as a consequence of death or for any other reason. Order 22, Rule 10 is not confined to devolution of interest of a party by death; it also applies if the head of the mutt or manager of the temple resigns his office or is removed from office. In such a case the successor to the head of the mutt or to the manager of the temple may be substituted as a party under this rule. The word 'interest' which is mentioned in this rule means interest in the property i.e., the subject-matter of the suit and the interest is the interest of the person who was the party to the suit.

9. It was, however, contended on behalf of the respondent that there was no devolution of the interest in the subject-matter of the suit on the death of Som Dass, since there was no certainty as to the person who would be elected as mahant to succeed him. The argument was that it was uncertain on the death of Som Dass as to who would become the mahant by election, that it was only when a person succeeded to the mahantship on the death of a previous mahant by virtue of law or custom that there would be devolution of interest in the subject-matter of the suit and, therefore, Order 22, Rule 10, would not be attracted. We see no force in this argument. We are of the view that devolution of the interest in the subject-matter of the suit took place when Shiam Dass was elected as mahant of the Dera after the death of Som Dass.

10. Som Dass was sued in his capacity as a person who claimed (though illegally according to the appellant) as mahant of the Dera. Som Dass contended that he was lawfully appointed as mahant of the Dera. He never set up any claim which was adverse to the Dera or its properties. The suit against

Som Dass was not in his personal capacity but in his capacity as de facto mahant. In other words, the suit was for possession and management of the Dera and the properties appertaining to it by the appellant purporting to be the de jure mahant against Som Dass as de facto mahant. The fact that it was after Som Dass died that Shiam Dass was elected to be the mahant of the Dera can make no difference when we are dealing with the question whether the interest in the subject-matter of the suit devolved upon him. The subject-matter of the suit was the interest of Som Dass in the Dera and its properties and it devolved upon Shiam Dass by virtue of his election as mahant subsequent to the death of Som Dass. And, as it was in a representative capacity that Som Dass was sued and as it was in the same representative capacity that the appeal was sought to be continued against Shiam Dass, Order 22, Rule 10 will apply. (See *Ratnam Pillai v. Nataraja Desikar*, AIR 1924 Mad 615 (1) : 84 IC 200). In *Thirumalai v. Arunachella* (AIR 1926 Mad 540 : 92 IC 520) the Court held that a succeeding trustee of a trustee who filed a suit and thereafter died during its pendency was not legal representative of the predecessor in office. The Court said that where some of the trustees die or retire during the pendency of a suit and new persons are elected to fill their place, it is a case of devolution of interest during the pendency of a suit and the elected persons can be added as parties under Order 22, Rule 10 notwithstanding that the period of limitation for impleading them had expired.

11. In *Roshan Lal v. Kapur Chand* (AIR 1960 Punj 382 : ILR 60 Punj 885) the Court took the view that newly appointed trustees are not legal representatives of the trustees who had filed the suit and thereafter died during the pendency of the suit, that they can be added as parties under Order 22, Rule 10 notwithstanding the fact that the period of limitation for an application to implead them under Order 22, Rule 3 had elapsed. The Court said (at p. 384) :

Such an application is obviously not an application under Order 22, Rule 3, Civil Procedure Code.

12. We also see no reason why the High Court should not have granted leave to the appellant to prosecute the appeal.

13. In the result we reverse the decree of the court below and direct the High Court to dispose of the appeal on merits. We allow the appeal but, in the circumstances, make no order as to costs.

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