SUPREME COURT OF INDIA

Harbans Singh

Vs.

Sant Hari Singh

C.A.No.100 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

13.01.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. The dispute between the parties in this matter is in regard to management of Gurudwara Sant Bela Sahib Patshahi Naumin (for short, "the said Gurudwara") situated in Village Kajal Majra and in Village Shergarh Bara. Sant Surjan Singh is the founder of the said Gurudwara. He had given the right of management of the said Gurudwara to Jagat Singh, who died in an accident during his life time. On or about 6.5.1982, he executed a general power of attorney appointing (1) Balu Singh s/o Talok Singh (Nabardar), (2) Harbans Singh s/o Ram Singh; and (3) Sant Nand Kaur widow of Jagat Singh as his attorneys in terms whereof they were conferred the powers to manage the whole of the property of the said Gurudwara.

> "Clauses (3) and (4) of the said power of attorney read as under:
>
> "(3) If any member out of these members dies then can elect another member with the acceptance of majority. The elected member will have same rights as these members have. I and the alone general power of attorney holders will act for Gurudwara with the acceptance of majority. (4) After my death the rights given by me to the alone said member will remain with them (sic). The contents of the General Power of Attorney read over and heard are found to be correct. So the General Power of Attorney is written with sound mind."

3. Sant Surjan Singh died on 2.12.1983. The Managing Committee of the Gurudwara, however, passed a resolution on 18.12.1983 in terms whereof one Sant Hari Singh was appointed as Mohtmim of the said Gurudwara and In-charge of the affairs thereof. Disputes and differences having arisen between the parties as to who should manage the affairs of the said Gurudwara, two suits were filed.

4. Sant Hari Singh filed Civil Suit No. 494-T/1995 for permanent injunction before the Court of Civil Judge (Jr. Division), Fatehgarh Sahib claiming that he was the Mohtmim of the said Gurudwara and he was in possession, control and management and enjoyment of the said Gurudwara. The Managing Committee of the said Gurudwara also filed Civil Suit No.367-T/1996 for declaration that the Managing Committee was in management and control of the said Gurudwara and was entitled to manage and control the same and the respondent was not a Mohtmim of the said Gurudwara and, thus, not entitled to manage its affairs. Both the suits were consolidated and directed to be heard together by an order dated 28.2.1997 passed by the learned trial judge.

5. By reason of a judgment and decree dated 11.5.2000, the suit filed by Sant Hari Singh was decreed with costs in terms whereof a decree of permanent injunction was granted restraining the Managing Committee from interfering with the possession, management and control of the respondent over the land of the said Gurudwara, and consequently the suit filed by the Managing Committee was dismissed with costs.

6. Appellant herein and the Managing Committee of the said Gurudwara preferred appeals thereagainst.

7. The learned Additional District Judge by a judgment and order dated 16.7.2003 held that the possession of the suit land as also the management of affairs of the said Gurudwara had vested in Sant Hari Singh, the respondent herein, in his capacity of a Mohtmim, and, thus, affirmed the decree for grant of permanent injunction passed by the learned trial court. The learned Additional District Judge furthermore opined that the revenue record having not been corrected in regard to the recording of death of Sant Surjan Singh, the said omission by itself, would not be sufficient to wash off the remaining entries which had been entered in favour of the respondent. It was furthermore held that the said power of attorney had ceased to have any effect after the death of Sant Surjan Singh.

8. Appellants herein aggrieved by and dissatisfied with the judgment and order dated 11.5.2000 passed by the learned trial court in Civil Suit No. 367-T/1995 and judgment and order dated 16.7.2003 passed by the learned First Appellate Court in Civil Appeal No. 62/2000 preferred Regular Second Appeal bearing No. 4657/2003 before the High Court of Punjab and Haryana at Chandigarh.

9. By reason of the impugned judgment, the said second appeal has been dismissed by the High Court, holding:

> "Two appeals being Civil Appeal No. 59 of 24.7.2000 and Civil Appeal No. 62 of 24.7.2000 were filed. One appeal was filed by Harbans Singh and others claiming that they duly constituted a Managing Committee and were in control and management of Gurudwara and its property. The other appeal was filed by the Managing Committee. This appeal was also filed by the Managing Committee, comprising of the aforesaid persons.

> The aforesaid two appeals were dismissed by the learned First Appellate Court. The present appellants, who were defendants in the suit, filed by Sant Hari Singh have chosen to file the present appeal. No appeal has been filed in the connected suit. In these circumstances, it has to be taken that the findings recorded by the learned trial court as well first appellate court in the suit filed by the Managing Committee and others have attained finality and Hari Singh has been held to be in possession, control and management of the Gurudwara and its property. Since the findings recorded in other suit have attained finality, therefore, the appellants in the present appeal cannot be heard (sic) to claim that the judgments and decree of the courts below are erroneous in any manner."

10. Mr. B.S. Chahar, learned Senior Counsel appearing on behalf of the appellants would contend that the principles of res judicata is not applicable in the instant case as in the suit filed by the Managing Committee the appellant was not a party. It was urged that the said principle could have been held to be applicable only in the event the parties in both the suits were the same.

11. Mr. P.S. Patwalia, learned Senior Counsel appearing on behalf of the respondents, however, supported the impugned judgment.

12. Appellant herein does not claim any right, title and interest in his individual capacity. He was the Vice-President of the Managing Committee. Thus, for all intent and purport, he was also a plaintiff in Civil Suit No. 367-T/1996. The judgment and decree passed in the suit filed by Sant Hari Singh might not have been binding upon the appellant herein had he claimed any right or interest over the said property in his individual capacity and not as a member of the Managing Committee. Indisputably, the Managing Committee did not file any Second Appeal against the judgment and decree passed against it. The said judgment and decree, therefore, attained finality.

13. Both the suits, as noticed hereinbefore, were consolidated. They were heard together. The disputes between the parties to both the suits were common. The issues raised therein also were common.

> "The Managing Committee filed a suit for declaration that it was in management and control of the said Gurudwara Sahib and was entitled thereto as also a declaration that the respondent was not a Mohtmim of the said Gurudwara and, thus, not entitled to manage its affairs. As the said decree had attained finality, it is binding on the appellants also. Appellants, therefore, in law, were required to prefer another Second Appeal against the judgment and decree passed in the said suit. The principle of res judicata in the aforementioned fact situation, in our opinion, has rightly been applied by the High Court."

14. Section 11 of the Code of Civil Procedure reads thus:

"Section 11 - Res judicata.-- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

15. In *Premier Tyres Limited vs. Kerala State Road Transport Corporation*[1], this Court held:

"....The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non-filing of appeal against a judgment or decree is that it becomes final. This finality can be taken away only in accordance with law. Same consequences follow when a judgment or decree in a connected suit is not appealed from.

5. Mention may be made of a Constitution Bench decision in Badri Narayan Singh v. Kamdeo Prasad Singh. In an election petition filed by the respondent a declaration was sought to declare the election of appellant as invalid and to declare the respondent as the elected candidate. The tribunal granted first relief only. Both appellant and respondent filed appeals in the High Court. The appellant's appeal was dismissed but that of respondent was allowed. The appellant challenged the order passed in favour of respondent in his appeal. It was dismissed and preliminary objection of the respondent was upheld. The Court observed, "We are therefore of opinion that so long as the order in the appellant's Appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit under the Bihar Government and therefore could not have been a properly nominated candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal, is founded on the contention that that finding is incorrect."

In *Union of India vs.V. Pundarikakshudu & sons & anr.*[2], this Court held:

"31. In this case the District Judge as also the High Court of Madras clearly held that the award cannot be sustained having regard to the inherent inconsistency contained therein. The arbitrator, as has been correctly held by the District Judge and the High Court, committed a legal misconduct in arriving at an inconsistent finding as regards breach of the contract on the part of one party or the other. Once the arbitrator had granted damages to the first respondent which could be granted only on a finding that the appellant had committed breach of the terms of contract and, thus, was responsible therefor, any finding contrary thereto and inconsistent therewith while awarding any sum in favour of the appellant would be wholly unsustainable being self-contradictory."

As no appeal was preferred by the Union of India while accepting the award made in favour of the first respondent, it had attained finality and, thus, the principle of res judicata was found to be applicable. It was opined:

"35. As the appellant failed to get that part of the award which was made by the arbitrator in favour of the first respondent set aside, the basic conclusion of the High Court cannot be faulted. The Court upon setting aside the whole award could have remitted back the matter to the arbitrator in terms of Section 16 of the Act or could have appointed another arbitrator, but at this juncture no such order can be passed as the award in part has become final."

The said decision applies to the facts of the present case also."

16. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly. No costs.

[1] *1993 Suppl. (2) SCC 146*
[2] *(2003) 8 SCC 168*