

# ALLAHABAD HIGH COURT

Ambrish Kumar Singh

Vs.

Raja Abhushan Bran Bramhshah

Civil Revn. No. 884 of 1987

(M.P. Singh, J.)

15.02.1988

## ORDER

**M.P. Singh, J.**

1. This is defendants' revision arising out of an order dated 12-8-1987 passed by the learned District Judge, Varanasi granting leave under Section 92 of the Civil Procedure Code to institute a suit against the applicant.

2. On 13-9-1980 Rani Bed Saran Kuari widow of Raja Keshaw Saran Shah executed a deed of endowment whereunder she transferred Taluq Chandauli, Kothi, garden and land to the idols installed in the temple. In order to benefit the ends of her husband and herself she gave a specification of various expenses on the specified objects and further provided that Shivala, as specified in the deed, shall be maintained for ever and that she and heirs and successors of the Agori Barhar Raj will be bound by the same. A copy of the deed has been filed as Annexure-1 along with the counter-affidavit. For the purposes of the present case only paras 6 and 9 are relevant whose English translation is being quoted below : (refer to page 119 of the Paper Book prepared by the High Court in First Appeal : No. 36 of 1943, which was placed before this Court by the counsel for the applicant ).

"Paragraph No. 6 :- Just as I stay in the enclosure of the Shivala in my lifetime, in the same way my successors and all the Hindu public of the Raj belonging to Pargana Agari Barhar and other relatives of Barhar estate, such as the Maharajah of Basti, the Maharajah of Bhinga, the Maharajah of Bijaipur, the Maharajah of Khajuragaon, and Maharajah of Manda, the Maharajah of Deonga, the Maharajah of Najholi, the

Maharajah of Nahson, the Raja of Deora, the Raja of Nagath and the Maharajah of Dumraon shall be empowered to stay there whenever they come to Kashi for a Sojourn or on a pilgrimage. It shall be necessary to observe the respect and honour due to the Shivala. In the same way it shall be incumbent upon the Pujari and the other employees attached to the temple to respect and honour my successors and relative like myself and others according to the status.

Paragraph No. 9 :

If there should arise any defect in the management specified above or in case my successors and representatives of the Barhar estate should not make proper arrangement for the protection, and management and maintenance of alms house and businesses referred to above or in case the arrangements made by them should be objectionable and should not (sic) be contrary to the object (one word illegible) and not (sic) according to the wishes of me the executants, the persons who have any concern with the property dedicated to the Shivala, with reference to this document or those who may be benefited by the existence and enforcement of the aforesaid arrangements, and the Maharajah of Benares shall have power to seek remedy in the proper manner and according to law through the officer of the time and the court, to get any competent and capable person appointed as manager and Mutawalli of the waqf property and Shivala or to obtain the dismissal of such appointed persons as may become man of bad character and incapable or may not perform the duties entrusted to them according to my wishes, and to get some capable person appointed in his place. Moreover, in exercise of my powers and proprietary title enjoyed by me the executants in the waqf property and the Shivala, I the executant do further covenant and wish that besides the aforesaid persons all the members of the Hindu religion on whom respect and worship of the Shivala are obligatory shall, in case they find after my lifetime any proceeding of management relating to the Shivala or the waqf property, contrary to my wishes and objects and the contents of this document, have the power, in a body or individually, to find means to remove the objectionable points through court or other necessary proceedings that may be required according to the law in force at the time."

Suit No. 422 of 1986 has been filed by five plaintiffs against the defendant-

applicant. Along with the plaint an application under Section 92, Civil Procedure Code dated 5-11-1986 was also filed for leave, which was granted by the learned District Judge, Varanasi on 12-8-1987 against which this revision has been filed.

3. Heard Sri Keshri Nath Tripathi, learned counsel for the defendant-applicant and Sri V. P. Misra, learned counsel for the plaintiff-respondent. Sri Tripathi raised the following points : -

"1. The plaintiffs-respondents are not the persons interested in the trust in question and as such have no right to sue.

2. The present suit has been filed on account of illwill and grudge against the defendant-applicant.

3. Earlier Suit No. 4/83 was also filed for the same relief which was dismissed on 7-8-1986 by the court of 2nd Additional District Judge, Varanasi and as such the present suit was barred.

4. The suit as framed was not maintainable under section 92, C.P.C.

5. There was no application of mind by the learned District Judge while deciding the controversy. I take up the first question. Whether the plaintiffs-respondents have no interest in the trust or not."

Paragraph 6 of the deed provides that the successors and all the Hindu public of the Raj belonging to Pargana Agari and Barhat Raj and other relatives of Barhat estate mentioned in the said paragraph will have a right of stay in the temple. Paragraph 9 of the deed provides if there arise any difficulty in the management and maintenance of alms house, and business referred to in the deed or arrangement, was not being done according to the wishes of the executant, the persons who have any concern with the property dedicated to the Shivala with reference to the documents shall have power to seek remedy in the proper manner. In this connection great emphasis has been laid by Sri Tripathi on the word 'and' in the tenth line which has been used in the following way : --

"The persons who have any concern with the property dedicated to Shivala with reference to this document or those who may be benefited by existence and enforcement of the aforesaid arrangement, and the

Maharajah of Benares shall have power to seek remedy in the proper manner....."

4. According to him this word 'and' used between arrangement and the Maharajah, means the person interested in the trust and the Maharajah of Benares together alone can file a suit. According to him unless Maharajah joins the suit along with other persons suit will not be maintainable. This argument is wholly misconceived. After the word 'aforesaid arrangement' there is a comma and then the conjunction 'and' has been used. The use of this conjunctive word 'and' cannot be treated to mean that the persons interested along with Maharajah of Benares alone can file that suit. Reading of Para 9 as a whole gives power to the Maharajah of Benares as well as the person interested to file the suit independently.

5. The interest of the plaintiffs have been disclosed in paras 1 to 4 of the plaint and also in the affidavit filed by Sri Anurdh Singh, before the learned District Judge, Varanasi, which I have looked into very carefully.

6. It is clear that the plaintiff No.1 is an heir of the original creator of the trust and the plaintiff No. 2 has a right to reside in the premises of the endowed property. Plaintiffs Nos. 3 to 5 are Hindus and have interest in the idols so installed. They are worshippers. All the plaintiffs have interest in the trust as contemplated under Section 92 of the Civil Procedure Code and they have got a right to file the suit. The contention of the learned counsel has no force.

7. The second point argued by the learned counsel is that the plaintiffs have grudge or ill-will against the defendant-applicant. No material has been placed before me on the basis of which he could substantiate his arguments. His contention is without any substance.

8. Now I come to the third point, "the effect of filing of Suit No. 4/83 and its dismissal on 7-8-1976."

The plaint of that suit has been filed along with the stay application. That suit was filed by Raja Abhushan Brahm Shah as plaintiff No.1 and Maharaja Kamal Singh as plaintiff No.2 against Amrish Kumar Singh and seven other

defendants.

The reliefs sought in Suit No. 4/83 were:

1. Removal of defendant No. 1 from the Mutawalliship.
2. For appointment of plaintiff No. 1 as Mutawalli.
3. Taking charge of all the accounts from defendant No.1 and giving the same to the plaintiff No. 1.
4. Cancellation of number of lease deeds executed by the defendant No. 1 on different dates.

The reliefs claimed in the present Suit No. 422 of 1986 are :

1. Removal of defendant No. 1 from the office of Mutawalli and appointment of some other Mutawalli (the second part of this relief was not prayed for in the earlier suit).
2. To hand over possession to the newly appointed Mutawalli.
3. To render the account.

9. The comparison of the reliefs sought in the two suits would indicate that they are different. Only part of relief No. 1 and third relief of Suit No. 4/83 are common. The parties in the two suits are also different Most of the controversies in the two suits were also different. Thus the order dated 7-8-1986 rejecting the application under Section 92 Civil Procedure Code in Suit No. 4/83 will have no effect on the maintainability of the present suit.

10. Section 92, Civil Procedure Code was amended by the Civil Procedure Code (Amendment) Act, 1976. Before this amendment suit could be filed either by the Advocate-General or two or more persons having interest in the trust and having obtained consent in writing of the Advocate-General. After the amendment the words "the consent in writing of that Advocate-General" were substituted by the words "leave of the court."

While granting leave the court does not decide the rights of the parties. No right is adjudicated at this stage. The, Court has merely to see whether there is a *prima facie* case for granting leave to file a suit. This order does not in any way affect the final decision which will be given on merit after the parties have led evidence in the suit.

11. So far as Section 92, Civil Procedure Code is concerned it does not

contemplate of giving any notice to the proposed defendants before granting leave. However, it has been held by the decision of this Court reported in *Mahanth Gurmukh Das v. Bhupal Singh*,<sup>1</sup> that the proceedings under Section 92, Civil Procedure Code are judicial proceedings and the order of the District Judge is a judicial order. The Court should pass the order after hearing the defendants. It is not necessary to pass a detailed order. It is sufficient if the order indicates that it is the result of the due application of mind of the Judge. May be that he has not written very elaborate order which in my opinion it was actually not needed. There is application of mind. Moreover, I see no jurisdictional error or illegal exercise of jurisdiction.

12. In the instant case after perusing the order and the relevant material on record I am satisfied that the District Judge has applied his mind before granting leave. The contention of the learned counsel has no force.

13. Now I come to the 4th point raised by the counsel for the applicant that the suit as framed was not maintainable.

14. In view of the discussions and the finding recorded by me on the first and third point this question now needs no finding. The suit has been properly framed and is maintainable.

15. Sri K.N. Tripathi referred to a decision of this Court reported in <sup>2</sup> *Mahanth Gurmukh Das v. Bhupal Singh* wherein it has been held :-

"When a person claims to have an interest in the trust and the claim is disputed by the opposite party, the Court should apply its mind to the question on the basis of the material on record and come to a conclusion, *prima facie* though it may be, on the question whether the person seeking its leave can be treated to be a person having an interest in the trust."

On the basis of this judgment there is an effort on his part that the case may be remanded to the learned District Judge to reconsider the matter for which there is no justification.

16. In, *Pandurang Dhondi Chougule v. Maruti Hari Jadhve* <sup>3</sup> it has been held :

"The High Court cannot while exercising its jurisdiction under Section 115, correct errors of fact, however gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the Court to try the dispute itself. It is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly involved. But an erroneous decision on the question of law having no relation to the question of jurisdiction will not be corrected by the High Court."

17. Relying upon this decision it can be safely inferred that there was no jurisdictional error or any error in the exercise of jurisdiction vested in the Court. The revision has no force and is dismissed. No order as to costs. The stay order stands automatically discharged.

Revision dismissed.

Cases Referred.

1. 1987 All LJ 369
2. 1987 All LJ 369
3. AIR 1966 SC 153