LAHORE HIGH COURT

Kirpa Singh

Vs

Rasalldar Ajaipal Singh

(Tek Chand, J.)

23.06.1928

JUDGMENT

Tek Chand, J.

1. The reference has arisen out of a suit instituted on 26th July 1921 in the Court of the Senior Subordinate Judge, Amritsar, with the previous sanction of the Collector obtained under Section 92, Civil Procedure Code, by certain worshippers of the Gurdwara of Guru Sar Sutlani praying that the defendant be removed from the office of the Mahant of the Gurdwara, that he be directed to render accounts of the trust properties, and that a scheme of management under a "committee of administration" be settled. It was alleged that the defendant had set up a title adverse to the trust with respect to the Gurdwara and the properties attached thereto, that he had been guilty of waste and misappropriation of large sums of money and of neglect of his religious duties, and that he was a man of immoral character and otherwise unfit to hold charge of his office as Mahant. The defendant denied these allegations, but the Subordinate Judge decreed the suit holding that the Gurdwara was a Sikh Gurdwara, that the properties in suit were attached to the institution and that the defendant was not a fit person to continue as Mahant. He accordingly ordered his removal from the office and settled a scheme for the appointment of his successor, who was to be assisted by a committee of management. He also ordered the defendant to submit accounts for a specified period for the scrutiny of the committee, and further directed that an allowance of ₹ 75 per mensem be paid out of the Gurdwara income to him as maintenance for his lifetime and that he be given a house at Amritsar for residence. The costs of the suit were ordered to be paid by the defendant personally and not from the Gurdwara income.

2. From this decree two appeals were lodged to this Court: C.A. 2630 of 1922, presented on 23rd October 1922 by the defendant praying for the dismissal of the suit, and C.A. 182 of 1923, preferred on 8th January 1923, by the plaintiffs objecting to the grant of maintenance allowance and the house for residence to the defendant. When these appeals came up for hearing before a Division Bench on 26th March 1928, a preliminary objection was raised on behalf of the plaintiffs that the Sikh Gurdwaras Act 8 of 1925 having in the meantime come into force on 1st November 1925, and the Gurdwara in question having been declared to be a "Notified Sikh Gurdwara" under the provisions of that Act, the High Court had no jurisdiction to hear and dispose of the appeals, even though they had been instituted before the Act was passed. As the points raised were of considerable importance the learned Judges of the Division Bench referred

the following three questions for the opinion of the Full Bench:

> (1) What is the effect of the provisions of the Sikh Gurdwaras Act upon the jurisdiction of the High Court in entertaining an appeal from a decree passed in a suit under Section 92, Civil Procedure Code, with respect to a Gurdwara when such a suit had been decided and an appeal had been preferred to the High Court against the decree of the trial Court before the Sikh Gurdwaras Act came into force?
> (2) What difference if any would it make if the Gurdwara, the subject-matter of the suit under Section 92, has been notified as a Sikh Gurdwara under the Sikh Gurdwaras Act after the decision of the trial Court but before the institution of the appeal?
> (3) In case the High Court is not competent to decide these appeals on account of the provisions of the Sikh Gurdwaras Act what further procedure should be adopted by the High Court with a view to forward the records to the tribunal constituted under the provisions of the Sikh Gurdwaras Act?

3. It will be noticed that question (1) is expressed in somewhat general terms and asks us to determine the effect of the Sikh Gurdwaras Act on the jurisdiction of the High Court to deal with an appeal which was pending on 1st November 1925, against a decree passed by a subordinate Court in a suit under Section 92, Civil Procedure Code, "with respect to a Gurdwara." Now for the purposes of the Act, Gurdwaras may, broadly speaking, be divided into three main classes:

> (A) Gurdwaras included in Schedule 1 of the Act and declared to be "Notified Sikh Gurdwaras" under Section 3(2).
> (B) Gurdwaras, not included in the schedule but in respect of which proceedings have been taken under Section 7 et seq of the Act to have them declared Sikh Gurdwaras.
> (C) Those which do not fall under class (A) or class (B).

4. The question as framed is not confined to cases falling in class (A) alone, but includes within its scope Gurdwaras of all the three classes. As the Gurdwaras with which we are concerned in this and the connected references were included in Schedule 1 and no proceedings had admittedly been taken within the prescribed period to have them excluded from it, it was decided at the hearing, with the concurrence of all parties, to limit the arguments to Gurdwaras of class (A) only. I shall accordingly discuss the matter in so far as it relates to such Gurdwaras alone and not concern myself with those which fall under class (B) or class (C).

5. Dr. Narang, who appeared for the plaintiffs-respondents began his arguments by boldly asserting that as a result of the enactment of the (Punjab) Act 8 of 1925 and of the Sikh Gurdwaras Supplementary Act 24 of 1925 (passed by the Central Legislature) all cases relating to Notified Sikh Gurdwaras, which were pending on 1st November 1925, in all civil Courts (including the High Court on its appellate side) became "automatically dead" and that from that date these Courts lost all power to proceed further with them and to give decisions thereon. He was, however, unable to refer us to any provision in these Acts in support of this contention, and was eventually constrained to admit that the bar applied (if at all) to the determination of certain specified matters only, which had been either conclusively settled by the legislature or the

cognizance of which was transferred exclusively to the Sikh Gurdwaras Tribunal, and that subject to these limitations the Courts were competent to continue the cases pending before them. Of the sections of the Act on which reliance was placed and which will be discussed in detail presently, Section 3(4) lays down certain presumptions, Sections 29 and 31 prohibit the Courts from entertaining or continuing "suits" or "proceedings" in so far as they involve certain specified claims or ask for certain reliefs, and Section 32 provides the mode of enquiry into and decision on certain issues. Even if all or any of these sections were intended to govern pending appeals, they merely deprive the Courts of the power to decide the particular matters mentioned therein and cannot be taken as creating an absolute bar against the Courts proceeding with the appeals, simply because the Gurdwaras concerned had been declared to be notified Sikh Gurdwaras. Therefore, even if we were to accept the respondent's interpretation of these sections, it does not follow that the appeals have automatically come to an end, but it will be for the Court in each case to see which (if any) of the questions arising in it have been taken out of its cognizance and what reliefs, if any, it is no longer competent to grant and then to proceed to decide the remaining points in the ordinary way.

6. Let us now consider whether all or any of the sections relied on by the respondents apply to appeals which were pending in the High Court on 1st November 1925 when the Act came into force. Sub-section (4), Section 3, lays down inter alia, (a) that the publication of a declaration and of a consolidated list under the provisions of Sub-section (2) shall be conclusive proof that the Gurdwara is a Sikh Gurdwara, and (b) that from the date of the publication of the notification declaring it to be a Sikh Gurdwara the provisions of Part 3 of the Act shall apply to it. In Section 41, which appears in Part 3, it is stated that the management of every Notified Sikh Gurdwara shall be administered by the committee constituted therefor, the Board, and the commission, in accordance with the provisions of this Act, and other sections in that part prescribe the machinery by which such administration is to be carried on. Now the terms of Sub-section (4), Section 3 are clear, explicit and imperative, and admit of no exception whatever. They determine conclusively the nature of certain Gurdwaras and lay down the law as to their future control and management. Pending litigation is not excluded from their purview and (provided the conditions laid down in the sub-section are fulfilled) it is not open to any Court including this Court, to determine whether or not a Notified Gurdwara is a Sikh Gurdwara or to settle a scheme for its future control and management. These two matters are, therefore, settled by the legislature and this Court cannot, go into them.

7. I shall next consider Sub-section (1), Section 31, on which reliance was placed on behalf of the respondents. This sub-section reads as follows:

> No Court shall continue any proceedings in so far as such proceedings involve any claim relating to a gurdwara specified in Schedule 1 or in regard to which a notification has been published under the provisions of Sub-section (2), Section 3, if such claim could have been made in a petition forwarded to the Local Government under the provisions of Section 5 or Section 6 or presented to a tribunal under the provisions of Sections 19, 20, 21 or 27 and was not so made, unless and until such Gurdwara is deemed to be excluded from specification in Schedule 1 under the provision of Section 4.

8. The language used is no doubt obscure on certain points and was the subject of much

discussion at the Bar, but it is clear from the portions underlined (here italicized) that this section governs only those cases in which petition could have been made to the Local Government under Section 5 or Section 6 or to the tribunal under Section 17 et seq, and were not so made. It does not apply whether either petitions could not have been made, or if they could have been made were not actually made within the period prescribed therefor, Now it was stated at the Bar by the counsel for both parties in this and the connected reference (G.A. 545 of 1925) that the parties concerned had actually presented to the Local Government petitions under Section 5 and that such petitions had been forwarded to the Tribunal for disposal. This being so Section 31(1) does not obviously apply and cannot affect the power of the High Court to proceed with these appeals.

9. It now remains to examine Sections 29 and 32 of the Act and see what effect, if any, they have on the appeal before us. Before examining these sections, however, I think it necessary to point out that it is now authoritatively settled that the right of appeal is not a mere matter of procedure but is a vested right which inheres in a party from the commencement of the action in the Court of first instance. If according to the law in force at the time when the action was started in the Court of first instance the ultimate decision of such Court was appealable the right to prefer or prosecute an appeal therefrom is not affected by a subsequent change of the law abolishing the appeal or modifying its forum, unless it is so provided expressly in the amending statute or follows by necessary implication from its terms. In *Colonial Sugar Refining Go. Ltd. v. Irving*[1] Lord Macnaghten, delivering the judgment of the Judicial Committee in a case from New South Wales, which according to the law in force at the time when the action was brought was appealable to the Privy Council, but in which under the Australian Commonwealth Judiciary Act (which had been enacted in the meantime) the appeal lay to the newly constituted Supreme Court, observed:

> The Judiciary Act is not retrospective by express enactment or by necessary intendment. And the before the only question is: Was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively, unless a clear intention to that effect is manifested.

10. It is an established canon of interpretation that "statutes should be interpreted if

[1][1905] A.C. 369

possible, so as to respect vested rights" *Hough v. Windus*[2] and in the absence of anything in an enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act is passed: *Leeds and County Bank v. Walker*[3] and *Moon v. Burden*[4]

11. Again cases may arise (and the present seems to me to be such a case) when a statute is retrospective with regard to certain sections only and silent as to others. The rule to be followed

in construing such a statute was thus explained in the House of Lords by Lord Cairns L.C., in *Gardner v. Lucas*[5]

> No doubt there is, with regard to some of its sections a very clear statement that they shall apply only to instruments written after the" passing of the Act; and with regard to other sections there is an equally clear statement that those sections shall apply to things done both before and after the passing of the Act, and there is a third class of cases, of which the 38th and 39th sections are examples, in which the Act contains no clear and explicit statement of whether it is to be retrospective or merely to be prospective. But in a case of that kind your Lordships have to examine the subject-matter of the enactment of the particular section which you have to construe, to bear in mind the effect of a construction which would make it retrospective, and to ask yourselves whether it is to be supposed that that' construction was intended by the legislature to be given to it. Your Lordships have further to guide and direct you, the observations which were made in this House in the case last referred to at the Bar, the case of *Urquhart v. Urquhart*[6] that in a matter of this nature any Court will be slow, to construe an enactment as retrospective and thereby as disturbing existing (rights, unless Parliament has clearly said that the enactment is to be construed retrospectively.

12. Based on the principle underlying the rules enunciated above, another and a subordinate rule has been laid down, that a statute is not to be construed so as to have a greater retrospective effect than its language renders necessary and that in construing "a section which is to a certain extent retrospective, the maxim ought to be borne in mind as applicable whenever the line is reached, at which the words of the section cease to be plain" (Maxwell's Interpretation of Statutes, 6th edn., 382). These being the established rules of interpretation to be followed in interpreting statutes which purport to affect vested rights, let us now proceed to apply them to Sections 29 and 32, Sikh Gurdwaras Act. It is admitted that in neither of these sections is there an express prohibition against an appellate Court proceeding to determine in a pending appeal the particular matters specified therein. The Bar applies in terms to "suits" or "proceedings" and not to "appeals." It has, however, been contended on behalf of the respondents that an appeal is in reality a continuation of the suit, in which the decree under appeal was passed by the Court of the first instance, and, therefore, the sections must be held to include in their ambit, if not expressly at least by necessary implication, the entire litigation beginning with the filing of the plaint or the making of the initial application in the trial Court, and ending with the decision of the Court

2[1884] 12 Q.B.D. 237 476 R.R. 479 61 Macq. 736
3[1883] 11 Q.B.D. 84 5[1878] 3 A.C. 582

of ultimate appeal or revision. In support of this contention reliance was placed on *Gobind Chundar Roy v. Guru Churan*[7] *Dinonath Ghose v. Shama Bibi*[8] *Settappa Goundan v. Muthia Goundan*[9] *Kristama Chariar v. Mangam Mal*[10] *Atchayya v. Seetharamachandra*[11] and *Rustomji v. Official Liquidator, People's and Amritsar Banks, Ltd*[12]. In the first three of these cases the question involved was whether, in reference to Section 52, Transfer of Property Act, the rule of lis pendens applied to the period between the passing of the decree of the' trial Court and the institution of the appeal therefrom. The fourth case interpreted Article 179, Limitation Act, 1877 and the fifth dealt with Section 115, Civil Procedure Code In the last case it was laid down that orders passed by the trial Court can be appealed against only by a person who was a party to

the litigation before it. The provisions of the law, which the Courts had to interpret in these oases are in no way similar to those of the Sikh Gurdwaras Act and the remarks made therein were not intended to be of universal application but had reference to the particular matter dealt with in each case.

13. Per contra it is possible to cite an equally large number of cases in which a narrower meaning has been attached to the word "suit" as denoting the stage of the litigation before the Court of the first instance, beginning with the filing of the plaint and ending with the decree or final order passed by such Court: see for example *Mrs, B. Baness v. Turton*[13] *Dhonessur Kooer v. Roy Gooder Sahay*[14] *Watkins v. Fox*[15] and the observations in *Mt. Lachhmi v. Mt. Bhulli*[16]

14. Similarly the word "proceeding" has been held in some enactments to include appeals: *Ratan Chand Shri Chand v. Hanmantaray Shivbakas*[17] but in others it has been given a narrower meaning. An instructive case of the latter class is *Hood Barrs v. Cathcart*[18] where the expression "action or proceeding instituted" in Section 2, Married Women's Property Act (56 and 57 Vict. C. 63, Section 2) was interpreted as an action or proceedings ejusdem generis in a Court of first instance, "in which the married woman was the actor," and it was definitely ruled that it did not include an appeal preferred by her from an order passed against her by the trial Court in a Us in which she was the defendant. This decision was approved by the House of Lords in *Hood Barrs v. Heriot*[19] Reference may also be made in this connexion to the judgment of Jessel, M.R., in *Holme v. Guy*[20] where a similar interpretation was put on the expression suit, petition or other proceedings' in Section 2, (English) Charitable Trust Act, 1853.

15. An examination of these and other cases leads to the conclusion that "suit" "proceeding" and words of similar connotation have different meanings in different statutes and that it is not possible to lay down a general rule of interpretation which would be applicable to all cases. In each particular case the question has to be examined in reference to the context and that meaning is to be preferred which will best fit in with it.

16. I have given my most careful consideration to the phraseology used in Sections 29

[7][1888] 15 Cal. 94 [9][1908] 31 Mad. 268 [11][1916] 39 Mad. 195
[8][1901] 28 Cal. 23 [10][1903] 26 Mad. 91 [12][1919] 79 P.R. 1919
[13][1883] 23 P.R. 1883 [15][1895] 22 Cal. 943 [17]6 Bom. H.C.R. 166
[14][1876] 2 Cal. 336 [16] A.I.R. 1927 Lah. 289 [18][1894] 3 Ch. 376
[19][1897] A.C. 177 [20][1877] 5 Ch. D 901

and 32 and have examined it in reference to other parts of the Act, and have reached the conclusion that the word "suit or proceeding" must be construed in a narrow sense as signifying an action in the trial Court or proceedings ejusdem generis and cannot be held to include appeals. Taking Section 32 first we find it laid down that where in any suit or proceeding pending at the commencement of the Act, in a civil or revenue Court it has become or becomes necessary to decide any claim in connexion with a Notified Sikh Gurdwara which the Court finds might be made under the provisions of Sections 3, 5, 6, 7, 10, 11, 19, 20, 21 or 27 within the time prescribed therein the Court shall frame an issue in respect of such claim and shall forward the record of the suit or proceeding to a tribunal and thereupon the tribunal shall proceed to hear and determine the issue and record its decision in the form of an order and shall return the record with a copy of its decision to the Court and the Court shall proceed to determine the suit or proceeding in accordance with such decision subject to the provisions of Section 3i. In my opinion the procedure laid down in this section was not and could not have been intended to

govern appeals, which were pending in the High Court or other appellate Courts on the day the Act came into force. The Tribunals constituted under the Act are admittedly Courts of original jurisdiction and have no appellate powers, and if the intention was to invest them with jurisdiction to deal with matter arising in pending appeals such intention should have been expressed more clearly and explicitly than has been done in Section 32.

17. Again, the principal function of an appellate Court is to review (subject to Order 41, Rule 27, etc.) the evidence recorded by the trial Court and to give its own findings thereon. But if the contention of the respondents were accepted the appellate Court dealing with matters mentioned in Section 32 must ignore the evidence given at the trial of the suit which is under appeal before it, and irrespective of the wishes of the parties, it must frame an issue and submit it to the Tribunal for determination, and after the Tribunal has given its finding thereon and returned the record to the appellate Court, it must (subject to the provisions of Section 34) decide the matter accordingly, without itself considering the evidence and seeing if the conclusions arrived at by the Tribunal are correct or not. In other words, the appellate Court, which is seized of the case, has not to apply its own mind to the matter but (so far as these issues are concerned) it must merely act as a ministerial functionary of the Tribunal, and decide in accordance with the findings recorded by the latter. And the position will be exactly the same whether the appellate Court is the High Court, to which the Tribunal is admittedly subordinate, or an inferior appellate Court like that of the District Judge or the Senior Sub-Judge, and whether the appeal is before the High Court as a first or second appeal or has been filed under the Letters Patent against a decree passed by a single Judge of the Court itself.

18. In cases in which the order of the Tribunal has been appealed against under Section 34, there will be simultaneously pending in the High Court two appeals, arising out of the same suit one against the decree of the Sub-Judge and the other against the order of the Tribunal. In one of them the Court has to adjudicate on the findings of the Tribunal on the issues referred to it, and in the other it has virtually no judicial functions to perform so far as the matters covered by the issues are concerned. It is conceded that such a position is highly anomalous and inconvenient and may at times lead to serious complications. In these circumstances, I am not, in the absence of clear words to the contrary, prepared to hold that Section 32 applies to appeals.

19. The phraseology used in Section 29 is similar to that in Section 32 and on similar considerations "suit or proceedings" in that section must be given the same meaning. Indeed it seems to me that the respondent's contention, if accepted with regard to this section, will lead to even greater anomalies. Take for instance a case like the one before us, in which the defendant was removed from his office as Mahant of the Gurdwara at Gur Sar Sutlani in due course of law, in execution of a decree which had been passed by a competent Court long before the Act came into force. Against this decree an appeal having been preferred, the whole case had once more become res sub judice and a duty was cast on the appellate Court to see if the trial Court had come to correct conclusions on the questions involved, including the question whether the appellant had been rightly removed from office. Let us assume, for the sake of argument, that the decision of the trial Court on this point was palpably erroneous, and on the evidence and under the law in force at the time, the appellant ought not to have been removed. Now if this Court cannot on appeal look into the matter and point out the error of the lower Court, its finding must stand unreversed, and as a result thereof the appellant will be deprived of the benefit of Section 134 and other provisions of the Sikh Gurdwaras Act to which he would have, but for the trial

Court's (admittedly erroneous) decree, been entitled as a "present hereditary office holder "of a Notified Sikh Gurdwara. Indeed it seems to me, that he would have occupied a far better position if the plaintiffs-respondents instead of having him removed through Court in a suit under Section 92 had taken the law into their own hands and forcibly ejected him. For in that case he or his "presumptive successor" would have been entitled to claim compensation under Section 6, but to which they are not even entitled in view of the decision of the lower Court. That this is not a mere fanciful argument is clear from the fact, admitted by both parties at the hearing, that the appellant (ex-Mahant Kirpa Ram) had actually applied for compensation under Section 6 to the Tribunal, but his application was rejected in limine on the ground that the section was inapplicable, as he had not been "unlawfully" dispossessed. In this view of the case the appellate Court is debarred from undoing the mischief done by the erroneous order under appeal. With all these startling consequences staring us in the face I am not prepared to hold that the legislature intended, as if it were by a side wind and without expressing itself more clearly than it has done, to effect so material a change in the jurisdiction and powers of the appellate Courts, including the High Court, to deal with matters properly pending before them. As pointed out by Jassell, M.R., in *Jacobs v. Brett*[21]

> Nothing is better settled than that an act of Parliament which takes away the jurisdiction of a superior Court of law must be expressed in clear terms. I do not mean to say that it may not be done by necessary implication as well as by express words, but at all events it must be done clearly. It is not to be assumed that the legislature intends to destroy the jurisdiction of a superior Court. You must find the intention not merely implied but necessarily implied.

20. In my opinion, Section 29 is no bar to this Court deciding the question whether

[21][1875] 20 Eq. 1

the appellant had been properly removed by the trial Court, though it may be that in view of Section 3 it may not be possible for it to grant to the appellant all the reliefs claimed by him. I would, therefore, hold that neither Section 29 nor Section 32 applies to pending appeals.

21. The foregoing discussion deals with questions (1) and (3). Question (2) as framed, does not really arise in this or the connected references, as it contemplates a case in which a Gurdwara has been notified as a Sikh Gurdwara after the decree of the trial Court but before the institution of the appeal. Both, the Gurdwara at Gur Sar Sutlani and the Dharamsala Bhai Abnasha Singh at Wazirabad, were admittedly notified after the institution of the appeals. It is, therefore, not necessary to examine this question in any detail, but having regard to the views expressed above, the position in such a case will for all practical purposes be the same as in cases is which a notification had issued during the pendency of the appeal.

22. To sum up: my answer to the questions referred is as follows:

> (1) The enactment of the Sikh Gurdwaras Act and the issue of a notification under the provisions of the said Act declaring a Gurdwara to be a Sikh Gurdwara do not bar the jurisdiction of the High Court to deal with an appeal against the decree of a subordinate Court passed in a suit under Section 92, Civil Procedure Code, in respect of the

Gurdwara, which appeal was pending when the Act; came into force or the notification was issued. The High Court must hear and decide the appeal though in view of the imperative provisions of Section 3 it may not be possible for it to grant all the; reliefs claimed. Under that section it is not open to the Court to go into the; question whether or not the Gurdwara is a Sikh Gurdwara nor can it settle a scheme of management in respect of such a Gurdwara. (2) This question does not arise in this reference. (3) The procedure laid down in Section 32 is applicable to "suits" or "proceedings" ejusdem generis pending in a Court of first instance and does not govern a pending appeal, even if all or some of the matters mentioned in that section arise for decision in the appeal.

Broadway, J.

23. I concur.

Addison, J.

24. I concur and have nothing to add.
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