

PANJAB AND HARYANA HIGH COURT

Prithipal Singh

Vs

Magh Singh

Civil Revn. No.521 of 1981

(D.S. Tewatia, J.)

01.10.1981

ORDER

D. S. Tewatia, J.

1. The respondents along with the plaintiff moved an application in compliance with the requirement of Section 92 Civil Procedure Code seeking the requisite permission for filing the suit for the removal of Prithipal Singh petitioner herein from the Managership of the Dharamshala Kohala Tahsil Zira, and for restraining him from alienating in any way the land attached to it measuring 113 Kanals 13 Marlas and bearing Khasra numbers mentioned in the plaint.

2. Petitioner-defendant filed the written statement to the plaint on 6th Dec., 1980. The case was adjourned to 13th Dec., 1980 for framing of issues and for the reply of the petitioner-defendant to the application for grant of leave to the filing of the suit. On 13th Dec., 1980, reply to the said application was filed. The stand taken by the petitioner-defendant in the reply to the application was that the Court could not grant any permission regarding the filing of the suit under Section 92 Civil Procedure Code, mandatory provision of the said section had been violated by the plaintiffs, as they did not obtain the requisite permission of the Advocate General before filing the suit. An objection to the jurisdiction was also taken. This led to the framing of the following two preliminary issues as under :-

1. Whether the Court has got any jurisdiction to try this suit?

2. Whether the approval of the Court or Advocate General is necessary before filing the suit?

3. Both the issues were decided against the petitioner defendant and preliminary objections were thus overruled.

4. It was argued before the trial Court in regard to the jurisdiction of the Court that only District Judge as the principal Court of Civil Jurisdiction, had the competence to try the suit.

5. Mr. Jain, counsel for the petitioner has reiterated the very submission and has canvassed that unless there was any notification empowering the trial Court in question, the trial Court could not try the suit. He has sought sustenance from a decision of this Court reported in *Gangagir Chela v. Rasal Singh*,¹ and drew pointed attention to the finding that under Section 92 Civil Procedure Code it is not only the institution of the suit but its subsequent trial and disposal also must take place in the Court of the District Judge, that however, under Section 21 of the Punjab Courts Act or Section 76 of the Pepsu Judicature Ordinance the District Judge can assign a part of the business pending before him to the Additional District Judge and when he does so, the latter can exercise the same powers and functions which the District Judge could, and that a suit under Section 92 of the Code must be instituted in the Court of the District Judge but there is no bar or prohibition against the exercise of his powers assigning the business to the Additional District Judge and once such suits are assigned to him he would be as competent to deal with it as the District Judge.

6. In my opinion there is no merit in the contention advanced on behalf of the petitioner. Gangagir's case AIR 1965 Punjab 472 (supra) was a case which was tried by the Additional District Judge, his competency to try the suit was questioned and it was in that context that it was said that the suit had not only to be instituted assuming that the suit could only be instituted in the Court of principal Civil Court of original jurisdiction, i.e., the District Judge but had also to be tried by him unless he exercised authority conferred on him under the provisions of Section 21 of the Punjab Courts Act and Section 76 of the Pepsu Judicature Ordinance and was to transfer the case for trial to the Additional District Judge. Relevant provision of Section 92 of the Code is in the following terms :-

"92(1). In the case of an alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate, General, or two or more persons having an interest in the trust and having obtained the leave of the Court may institute a suit, whether contentious or not in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate 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. A perusal of the same would show that the suit under Section 92 of the Code can be instituted both in the Principal Civil Court of original jurisdiction as also in any other Court empowered in that behalf by the State Government, within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust was situated. Section 15 of the Code which is in the following terms envisages that every suit shall be instituted in the Court of lowest grade competent to try it :-

"15. Court in which suit is to be instituted.- Every suit shall be instituted in the Court of the lowest grade competent to try it."

8. In view of the provisions of Section 15 if there was any choice to institute a suit either in the principal Court of Civil original jurisdiction, i.e., the District Judge, or any other Court then the plaintiff was to file a suit in the lowest Court.

9. It was then argued by Mr. Jain, that there has been no notification empowering any other Court and unless such a notification is there the suit had to be instituted and tried in the Court of the District Judge.

10. On behalf of the respondent attention of the Court is drawn to the gradation and distribution list of officers of the Judicial Department of Punjab issued by the Punjab Government and in particular to para 7 of the list which specifically deals with the powers to hear suits by Courts under Section 92 Civil Procedure Code Therein it is mentioned that the powers are exercised ex-officio by all subordinate Judges in the State of Punjab.

11. It deserves highlighting that such a provision has been in the gradation list all through. Mr. Jain, however argued that the gradation list cannot take the place of a specific notification by the Government.

12. Provisions of Section 92 of the Code do not envisage that other Courts are to be empowered by a gazette notification. Since the gradation list and its contents are prepared and approved by the Government and it is a Government publication and it mentions that the powers are exercised by all Subordinate Judges of Punjab ex- officio, the same must be considered sufficient proof of the act of empowering by the Government of all Subordinate Judges including the trial Court in question, to receive the complaints and try the suits under Section 92 Civil Procedure Code

13. As regards the question of granting of leave a perusal of Section 92 of the Code supplies the answer in regard to the authority which has the power to grant leave. It envisages that both the Civil Court of original jurisdiction or other Court can grant the requisite leave for filing of the suit and, therefore, the stand of the defendant-petitioner that the Court was not competent to grant leave under Section 92 of the Code is not correct.

14. It has been next argued that leave being a condition precedent to the filing of the suit, so the leave ought to have been granted first before the filing of the suit.

15. There is no dispute with the proposition that the grant of leave is the condition precedent to the filing of the suit and that the provisions of Section 92 of the Code are mandatory in nature in that respect and a defendant cannot waive that right and thus confer jurisdiction on a Court. The trial Court in the present case was certainly not right in observing that the granting of leave is a mere irregularity which can be cured or that the defendant having filed the written statement should be taken to have waived his right to question the filing of the suit.

16. The trial Court however, further observed that it has granted tacit permission to the plaintiff. So the question that calls for consideration is as to whether the granting of tacit permission satisfies the requirement of Section 92 Civil Procedure Code in other words whether the procedure followed was a proper procedure.

17. In my opinion the procedure followed by the trial Court was the correct procedure. The plaintiff-respondents had moved an application for the grant of leave, wherein they have mentioned that the grounds of removal are those which are mentioned in the plaint. It so happened, that, as already pointed out, the defendant questioned the power of the Court to grant leave as also the competence to try the suit. In the circumstances the Court had to frame two preliminary issues and while deciding the two issues it observed that the plaintiffs have its permission to file the suit and it is from that stage that the trial of the suit would proceed. To that extent the granting of permission is prior to the filing of the suit.

18. Mr. Jain argued that there had been no application of mind by the trial Court to the requirement of the provision of Section 92 in regard to the granting of leave in that it does not give any reason as to why the granting of leave was justifiable.

19. There is no merit in this contention as well. The Court does not have to write a reasoned order. It does not even have to give a notice to the defendant of such an application as the order granting leave is of an administrative nature.

20. For the reasons aforementioned there is no merit in this petition and the same is dismissed but with no order as to costs.

Petition dismissed.

Cases Referred.

1(1965) 67 Pun LR 592 : AIR 1965 Pun 472