

# RAJASTHAN HIGH COURT

Shrimali Lal Kasliwal

Vs.

Advocate-General

Civil Writ Appln. No. 358 of 1954

(Wanchoo, C.J. and Sharma, J.)

26.11.1954

## JUDGMENT

### **Wanchoo, C.J.**

1. This is an application by Shrimalilal Kasliwal and two others under Articles 226 and 227, Constitution of India, and arises in the following circumstances.

2. It appears that Shrinarain Lal, opposite party, and others have applied to the Advocate-General, under Section 92, Civil Procedure Code for permission to file a suit in the civil court in relation to a certain temple which is claimed to be a trust created for public purposes of charitable or religious nature. That application is being considered by the Advocate-General and the present applicants, who happened to be the trustees, are also before him. It is alleged that the Advocate-General is biased against the applicants because of certain remarks alleged to have been made by him while he was hearing the parties. The applicants, therefore, have made this application for a writ, direction or order. Their case is that the Advocate-General is a quasi-judicial authority and a writ of certiorari should issue. They have also made the State of Rajasthan a party because of the difficulty that under Section 92 the Advocate-General is the only person to deal with applications for granting permission to sue, and unless the State Government decides to appoint another officer under Section 93, there is no other person who can grant the permission necessary under Section 92.

3. We are of opinion that there is no force in this application. Our attention was drawn to - '*Abu Backer Adam Sait v. Advocate-General, of Trav-Co. State*',<sup>1</sup> With all respect to the learned Judges we cannot accept the view that they have taken. Section 92 does not provide any procedure for the Advocate-General which he has to adopt in

granting permission. It does not even require that the Advocate-General should hear the other party who is to be sued before granting the permission under Section 92. All that is required is that the Advocate-General should be prima facie satisfied that the case is of the nature mentioned in Section 92, and then he can give his permission. It may also be mentioned that under Section 92 the Advocate-General can file a suit himself or give permission to two or more persons to do so. Obviously this function of the Advocate-General cannot be called a Judicial or quasi-judicial function under the circumstances, and there is no question of revising it under Article 227, or issuing a writ under Article 226 compelling him to do this, that or the other.

4. We are further of opinion that Section 93, Civil Procedure Code, does not make it compulsory for the State Government to appoint another officer in case the Advocate-General is there to perform the functions assigned to him under Section 92. It is therefore not possible to issue a writ of any kind to the State Government to take action under Section 93, as that section does not itself compel them to do so.

5. Even if the Advocate-General grants permission to two or more persons to file a suit, that does not finish the matter. The suit if filed has to be decided by a court of law, and we do not see why we should interfere with the discretion of the Advocate-General in these circumstances.

6. Learned counsel urges that Section 92 itself has become ultra vires in view of the provisions of the Constitution. This, if we may say so, is an argument of despair. We are satisfied that it is not hit by Article 14 for trusts for public purposes of a religious or charitable nature are a defined class, and the legislature has made provision of saving trustees of such trusts from being harassed by frivolous litigation by requiring the permission of the Advocate-General.

7. As for Articles 19 and 31 of the Constitution, on which also reliance is placed, it is enough to say that those Articles have no application to this case, because there is no question that any fundamental right of the applicants is taken away, or the applicants are being deprived of any property by the provisions of Section 92.

8. There is no force in this application, and it is hereby dismissed.

Application dismissed.

Cases Referred.

1. AIR 1954 Trav Coc 331

2.