

RAJASTHAN HIGH COURT

D.C.B.S.H.S. Maharaj

Vs.

Assocn. of R.D.B.B.S.

C.F.A. No. 39 of 1980

(Prakash Tatia, J.)

30.07.2002

JUDGEMENT

Prakash Tatia, J.

1. By this appeal, the plaintiffs have challenged the judgment and decree of the trial Court dated 7-1-1980 by which the trial Court dismissed the suit of the plaintiffs holding that the suit is not maintainable in view of the provisions of Section 92 of the Civil Procedure Code, for short 'the C.P.C.').

2. The controversy involved in the suit is about 40 years old. Few facts which occurred before filing of the suit and relevant for the purpose of decision of this appeal are required to be narrated in brief.

3. Earlier Civil Original Suit No. 28/66 was filed challenging the trust-deed and deed of transfer both dated 15-12-60, executed by Sant Sat Guru Deva Singh in respect of the properties of Dera Sant Sat Guru Baba Bagga Singh of Taran Taran which is the subject-matter of present suit also. The above suit was decreed by the Additional District Judge on 2-12-1969 against which D.B. Civil First Appeal No. 45/1970 was filed by the Association of Radhaswami Dera Baba Bagga Singh who was defendant in above suit (defendant in the present suit and respondent No. 1 in this appeal). The Division Bench of this Court allowed the appeal of the defendant only on the ground that the suit filed by the plaintiffs was not maintainable as no permission under Section 92, C.P.C. was obtained by the plaintiffs before filing of the suit. Some of present plaintiffs were also common plaintiffs in the earlier filed Suit No. 28/66. The plaintiffs in this case, in para No. 20 of the plaint, stated that cause of action accrued on 23-10-60 when defendant No. 1 encroached upon the properties of the Dera and on

15-12-1960 when Baba Deva Singh executed declaration of trust deed and transfer deed in favor of the defendant No. 1 and, thereafter, on 17-2-1972 when the Division Bench of this Court dismissed the Suit No. 28/66 and on 21-5-1972 when the possession was handed over by the Receiver to defendant Nos. 1 and 2. The facts which were alleged in the Civil Original Suit No. 28/66 are given in the judgment of the Division Bench in the case of *Association of Radhaswami Dera Baba Bagga Singh v. Gurnam Singh*,¹ which are required to be quoted here because these facts will be having relevance for the purpose of deciding this appeal which read as under (at page 264 of AIR) :-

"It is stated in the plaint that Baba Bagga Singh of Taran Taran established a religious institution for the propagation of the tenets and preaching's of the Radhaswami faith at Taran Taran. He accordingly initiated many disciples to this order and acquired movable and immovable properties for the development and progress of the order. He consequently established a Dera which is known as Sant Sat Guru Baba Bagga Singh Dera at Taran Taran hereinafter referred to as the Baba Bagga Singh in his lifetime nominated Sant Sat Guru Deva Singh as his principal disciple descendant to the Gaddi. On the death of Baba Bagga Singh, Deva Singh succeed to the Gaddi. He also acquired properties. Baba Devi Singh died on 20-12-60. Three or four months prior to his death, he had become extremely weak and was not in a position to even walk. It is further stated in the plaint that some interested persons had created factions amongst the sewadars and won some of them over their side with a view to grab the properties of the said Dera. To achieve this end, it is stated that they managed to get executed by Sant Sat Guru Deva Singh trust deed Ex. 2 and deed of transfer Ex. 3 in respect of properties of the Dera by exercising coercion, undue influence and fraud upon him on 15-12-60, and also got established an Association under Memorandum of Association Ex.1. It is pertinent to mention here that under the trust-deed Ex. 2 dated 15-12-60, Baba Deva Singh appointed himself the sole trustee of the properties of the Dera and in the capacity of the sole trustees, transferred on the same day all the properties under Ex. 2 belonging to the Dera in favor of the Association hereinafter to be referred as defendant No. 1, for the management of the aforesaid properties. The plaintiff allege that the trust-deed Ex. 9 and the transfer-deed Ex. 3 as well as the Memorandum of Association Ex.1 and the Association made there under were illegal, void and contrary to the provisions of law. The plaintiff impeached the

validity of the trust deed *inter alia* on the following grounds. (1) That the Dera Baba Bagga Singh being a public religious institution and its properties being religious property in the nature of trust property and that Baba Deva Singh being merely a trustee of this property could not create any further trust in respect thereof. That in any event, the trust-deed was void as the same was not executed by free will and was vitiated by coercion, fraud and undue influence. The transfer-deed Ex.3, dated 15-12-60 was impeached mainly on the grounds (1) that the properties transferred thereunder were public religious trust properties and, were therefore, inalienable; and (2) that Baba Deva Singh had no authority to alienate the public religious trust properties. The plaint further goes on to state that the defendants had taken over the possession of the properties of the said Dera illegally and were even dealing with them in contravention of the object of the trust. It has been stated that one Pratap Singh, defendant No. 2, had illegally proclaimed himself to be the Sant Sat Guru of the said Dera. The plaintiffs, therefore, stated that the trust-deed and the transfer-deed being void could not confer any right on the defendants and their possession was merely that of a trespasser. On these allegations the plaintiffs prayed for a declaration for declaring the transfer-deed Ex.5, the trust-deed Ex.2 and the Memorandum of Association Ex.1 to be void. The plaintiffs also prayed for three more reliefs as a consequence of the said declaration; firstly, for the removal of defendant No. 2 from the post of Sant Sat Guru of the said Dera, secondly, for convening a meeting of the Sangh for appointment of a new Sant Sat Guru, and thirdly, for the appointment of a Receiver and taking accounts with regard to the properties of the said Dera."

4. On the plea of the defendant that the suit filed by the plaintiffs was not maintainable in view of the bar under Section 92, C.P.C., the Division Bench in the above judgment held that to determine applicability of Section 92, C.P.C., the allegations in the plaint are to be looked into and to find out whether the suit as framed by the plaintiffs requires compliance of Section 92, C.P.C. or not, narrated the facts of the case as mentioned above and also quoted the reliefs claimed by the plaintiff in the Suit No. 28/66 which are quoted as under :-

"(1) The plaintiffs pray that their suit be decreed against the defendants and decree be passed as prayed.

(2) It be declared that the trust-deed and the transfer deed dated 15-12-60 and

the formation of the Association, defendant No. 1 is contrary to law and is void. As a consequence of the above declaration the following further reliefs be granted to the plaintiffs :

(i) Defendant No. 2 Baba Pratap Singh be removed from the office of Sant Sat Guru and the meeting of the "Sangat" of the followers of the Dera Baba Bagga Singh be convened and new Sant Sat Guru of the Dera be appointed.

(ii) the defendants be dispossessed from all the movable and immovable properties of the Dera and a Receiver be appointed to take over the properties and after the appointment of the Sant Sat Guru, the same should be handed over to him.

(iii) the accounts should be taken of the properties of the income and expenses in respect of the property of the Dera Baba Bagga Singh and whether is found due after accounting, the same should be given to the newly appointed Sant Sat Guru,

(iv) Costs of the suit be awarded to the plaintiffs."

5. After considering the facts mentioned in the plaint, the Division Bench of this Court held that though there is a controversy, when and how the properties became the public religious endowment, but it was admitted by both the parties that at the time of institution of the suit, the properties were of the nature of public religious endowment. In that suit also there was contention of the plaintiff that the public religious trust set up in the plaint is different from the one admitted by the defendant in that suit. The above two positions are the same in the present suit. The Division Bench also considered the contention of the plaintiff that there is no breach of trust alleged in the plaint and no occasion arose for any direction of the Court as contemplated under Section 92, C.P.C., for which the Division Bench observed that "it is allegations contained in the plaint that determine the jurisdiction of the Court under Section 92". The Division Bench found that there are more than once the breach of trust on the part of the defendant was alleged in the plaint on the basis of the allegations in the plaint that Baba Deva Singh has illegally created a trust and unlawfully transferred the properties of the trust by constituting himself as the sole trustee and has established an Association and the defendant No. 2 illegally proclaimed as Sant Sat Guru of Dera. The plaintiffs in that suit also alleged that the defendants have illegally taken possession of the Dera's properties and have been wasting it in contravention of the object of the trust and it was with a view to protect the interest of the followers of Radhaswami faith that the present suit is being filed. The plaintiff further alleged that

defendant No. 1 has been brought into being for wiping out the very existence of the aforesaid religious endowment in direct breach of the object of the trust. The plaintiffs also asked for the appointment of new Sant Sat Guru and for the administration of the properties according to the objects of the trust and asked for appointment of Receiver. The plaintiff in that suit also labeled the defendants as trespassers for which the Division Bench held that the allegations substantially constituted allegations amounting to intermeddling with the properties by the defendants without asserting adverse title in themselves and, after considering various judgments of different High Courts as well as the judgments of the Hon'ble Supreme Court, particularly, *Bishwanath v. Radha Ballabhji*,² which is also being relied upon by the learned counsel for the appellant in this case, the Division Bench held that "suit was covered by the provisions of Section 92, C.P.C." and since no permission was sought under Section 92, C.P.C. before the suit by the plaintiff, therefore, the suit was not maintainable and was dismissed.

6. In the background of above, making dismissal of earlier suit as one of reason for filing present suit, the present suit was filed by the plaintiffs before the District Judge, Sri Ganganagar which was also transferred to the Court of Additional District Judge, Sri Ganganagar. The Additional District Judge in the present suit again held that the suit of the plaintiffs is not maintainable as in this suit also no such permission was obtained by the plaintiff before filing the suit.

7. Learned counsel for the plaintiffs submitted that present suit is different from the Suit No. 28/66 filed earlier. Whether the present suit is different from the suit filed earlier and whether the present suit also is covered under the provisions of Section 92, C.P.C. as held by the trial Court, facts, grounds and the reliefs claimed in the present suit are required to be examined.

8. In the present suit, the plaintiffs alleged that Sant Sat Guru Baba Bagga Singh of Taran Taran established a religious institution for the propagation of tenets and preachings of Radhaswami at Taran Taran. He received gifts from disciples of this sect for religious and charitable purpose by which movable and immovable properties were created. He also constituted Dera which is known as Sant Sat Guru Baba Bagga Singh Dera at Taran Taran. Baba Bagga Singh in his lifetime nominated Sant Sat Guru Deva Singh as his principal disciple descendant to the Gaddi. Baba Deva Singh expired on 20-12-60. Three or four months prior to his death, Sant Sat Guru Deva Singh became

extremely weak and was not in a position to even walk. It is further stated in the plaint that to get the properties of Dera, some interested persons had created an Association named as Association of Radhaswami Dera Baba Bagga Singh and this Association, by dividing saints and worshippers, took over possession of the properties of the Dera and in violation to the customs of the Dera and with an object to grab the properties of the Dera, one Pratap Singh s/o Jodh Singh has been set up as President and above Association started treating as Sant Sat Guru. It is further alleged in the present suit that defendant Nos. 1 and 2 managed to get executed a deed of declaration of trust from Sant Sat Guru Baba Deva Singh on 15-12-60 in which Sant Sat Guru Baba Deva Singh was declared to be trustee of the Dera's properties and on the same day, i.e. on 15-12-60, another document was got executed from Sant Sat Guru Baba Deva Singh transferring the entire trust properties in favor of defendant No. 1-Association. These deeds were challenged by the plaintiffs in the present suit on the ground that these deeds are illegal, void and contrary to the provisions of law. The validity of the trust deeds was challenged on the ground that on 15-12-60 Sant Sat Guru Baba Deva Singh was physically and mentally not in a position to execute the above documents. The properties involved in the trust-deeds were having the nature of trust properties, therefore, Sant Guru Baba Deva Singh had no authority to transfer the trust properties in favor of defendant No. 1, by deed of 15-12-1960. The sole trustee Sant Sat Guru Baba Deva Singh delegated his powers of trustee in favor of other persons and society which is contrary to the Constitution of Dera, therefore, the deed is illegal. The declaration of trust deed and transfer deed are vague and uncertain, therefore, they are illegal. It was also stated in the plaint that, in fact, the above documents were not executed by Sant Sat Guru Baba Deva Singh. It was further submitted by the plaintiffs that defendant No. 2 is not competent to become Sant Sat Guru as he is having his family, therefore, declaration of defendant No. 2 as Sant Sat Guru is illegal. For plaintiff No. 1, it is stated in the plaint that after the decree in Civil Original Suit No. 28/66, dated 2-12-1969, on 15-3-1970, Sangat of the Dera elected plaintiff No. 1 as Sant Sat Guru and from then plaintiff No. 1 is working as Sant Sat Guru. In para No. 17 of the plaint, the plaintiffs specifically stated that defendant Nos. 1 and 2 on the basis of the declaration of the trust deed dated 15-12-60 claiming themselves to be trustees of the Dera but in fact, they are trespassers. In para No. 18 of the plaint, it is stated that the plaintiff No. 1 being the elected Sant Sat Guru of the Dera, is entitled for the possession of the properties of the Dera.

9. On the basis of above, the plaintiffs claimed following reliefs in the present suit:

- (i) It may be declared that the properties mentioned in Schedule- 'Ka' be declared as religious and public charitable properties of Radhaswami Dera Baba Bagga Singh, Taran Taran. The declaration of trust deed and transfer deed dated 15-12-1960 in favor of defendant Nos. 1 and 2 executed by Sant Sat Guru Deva Singh be declared as illegal, void and contrary to the law and in pursuance of above deeds, defendant Nos. 1 and 2 have not acquired any right in the properties of the Dera.
- (ii) It may be declared that the constitution of defendant No. 1 is illegal and contrary to the memorandum, rules and regulations of the Dera and also in violation to religious trusts and, therefore, they may be declared as illegal, null and void.
- (iii) Decree for possession of the properties mentioned in Schedule-"Kha" Part "Aa" be passed.
- (iv) Decree for mesne profits against defendant Nos. 1 and 2 be passed.
- (v) A Receiver be appointed for the properties mentioned in Schedule-"Kha" Part 'Aa'.

10. It is relevant to mention here that the plaintiffs submitted the schedule of the properties of the above Dera in which there are total seven properties shown. The properties Nos. 1, 2, 3, 5 and 7 are at Taran Taran, District Amritsar, whereas property No. 4 is also situated in the District Amritsar at village Vuslavadh Tehsil Patti. The only property No. 6 which is agricultural land is situated in Rajasthan at Ganganagar.

11. The details facts of the earlier suit and the present suit were necessary to be mentioned while deciding this appeal because of the fact that there is a serious dispute between the appellants and the respondents on the point whether the present suit is, in sum and substance, containing the same facts and reliefs which were mentioned and claimed in the earlier filed Civil Suit No. 28/66. The facts of the two suits, mentioned above, leave no doubt that the present suit is nothing but filed on the basis of the same facts which were mentioned in the earlier suit, making the dismissal of earlier suit a reason for filing present suit, with grounds which were taken in the earlier suits, with a substantial prayers which were claimed in the earlier suit though the plaintiffs in present suit has not claimed relief of removal of Pratap Singh from the office of Sant Sat Guru and direction for appointment of new Sat Guru but this relief is implied in relief No. 2 claimed in present suit. Relief of taking account has been changed by asking for relief of manse profit. Therefore, in fact, present suit is nothing but the

same suit on the basis of same facts with same grounds and same relief. Its effect will be seen at relevant place.

12. The learned counsel for the appellants submitted that the plaintiffs have nowhere said that the properties of Radha Swami Dera Baba Bagga Singh is religious charitable properties. The plaintiffs have only said that the nature of these properties are of the trust and, therefore, the plaintiffs filed the suit for declaration that the properties mentioned in the Schedule-"Ka" be declared religious and public charitable trust properties of Radhaswami Dera Baba Bagga Singh and, according to the learned counsel for the appellant, since the properties are not of the public trust, therefore, Section 92, C.P.C. has no application to the present suit. The argument of the learned counsel for the appellants deserves to be rejected because it is absolutely contrary to the pleadings in the plaint itself. The plaintiffs unequivocally in para No. 1 of the plaint itself stated that Sant Sat Guru Baba Bagga Singh established Dera Radhaswami at Taran Taran for propagation of the tenets and preaching's of Radhaswami faith at Taran Taran. It is alleged in the plaint that the properties at the Dera was acquired from the money received from the disciples of the Radhaswami sect. In para No. 5 of the plaint the plaintiffs stated that nature of the properties of the Dera is religious and public charitable character. Despite these facts, it is strange to say that an institution established for religious preaching's from the money received from the disciples for religious and charitable purposes and from that money, acquired the properties and nature of the properties is admitted to be of religious and public charitable properties even then it is said that the properties involved in the suit of the Dera are not admitted in the plaint as religious public charitable trust properties.

13. Even the reliefs claimed by the plaintiffs in the suit itself clearly indicative of the fact that the properties in dispute has been admitted by the plaintiffs as religious and charitable trust properties and, therefore, the plaintiffs have sought relief of declaration that the properties in disputes be declared as religious and public charitable properties of the Dera. This declaration itself can be sought by the plaintiffs for pre-existing trust and its properties. Decree of declaration of trust and trust properties will neither create trust nor will bring into life trust if it was not alive. Decree of declaration as sought by the plaintiffs if granted by the Court it can be declaration of pre-existing trust and its properties. It does not lie in the mouth of the plaintiffs to ask for declaration of properties to be declared as trust property without there being a trust in existence.

14. It will be worthwhile to mention here that second relief claimed by the plaintiffs as quoted above, is a relief of declaration that the constitution of the defendant No. 1 is illegal and contrary to the memorandum, rules and regulations of Dera and also in violation to religious trust, therefore, it may be declared illegal, null and void. How constitution of defendant No. 1 can be claimed to be in violation to religious trust if there is no trust already in existence? Therefore, there is no substance in the submission of the learned counsel for the appellants-plaintiffs that the appellants-plaintiffs have not admitted existence of trust.

15. The learned counsel for the appellants relied upon the definition of the "trust" given in Section 3 of the Indian Trusts Act, 1882 (for short "the Act of 1882") and also referred to Sections 5 and 6 of the Act of 1882. Section 3 of the Act of 1882 says that a trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner and, thereafter, it is described, who are the authors of the trust, who are called trustees and beneficiary and what is the meaning of breach of trust. Section 5 of the Act of 1882 provides that no trust of immovable property is valid unless declared by non-testamentary instruments in writing signed by author of trust or trustee and registered by the Will of the author of the trust or of trustees. Section 6 governs the field of creation of the trust subject to provisions of Section 5 of the Act of 1882 which says that the trust is created when the author of the trust indicates with reasonable certainty by any words or acts, (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust property, and (unless the trust is declared by Will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee.

16. These provisions make it clear that what is the trust, how trust can be created, how the trusts can acquire the properties. In view of the above definitions itself, it is clear that the trust can be created as per the provisions contained in the Act of 1882. This also supports the view taken by me that by declaring a property of the trust, the Court is not creating the trust but the Court can declare the pre-existing trust and trust properties to be the trust properties. If the contention of the plaintiffs-appellants is accepted that these properties were not the trust properties at the time of filing of the suit, then how the plaintiffs can ask for declaration about the properties to be trust properties, has not been explained by the learned counsel for the appellants and I do not find any reason to permit the plaintiffs to take a different stand than what they

have taken in the plaint, specifically, clearly and unequivocally that the properties mentioned in Schedule "Ka" of the plaint are, according to the plaintiffs, trust properties. Even if it is disputed which appears to be not the case of the plaintiffs, even then the plaint allegations which are to be seen to find out whether Section 92, Civil Procedure Code applies to the present suit or not and if it is found by the plaint allegations itself that the claim of the plaintiffs is based upon the admission of the properties being trust properties then the applicability of Section 92, Civil Procedure Code is to be judged on the basis of plaint allegations and the defendants cannot even by denying oust the applicability of Section 92, Civil Procedure Code nor it can change the nature of suit. The Division Bench of this Court also held so in the above-mentioned judgment, reported in 1972 RLW 182 in respect to the controversy which is involved in this suit. Therefore, it is held that the present suit is for the properties of the religious public charitable trust.

17. But merely because properties involved in the suit are trust properties itself will not make the suit within the ambit of Section 92, Civil Procedure Code. The Division Bench considered the fact involved in that case with respect to this very trust, its property and plaintiffs' grounds for challenge and reliefs claimed which as held in the present case are the same, the Division Bench held that permission under Section 92, Civil Procedure Code was condition precedent for maintaining the suit by holding that term "trustee" used in Section 92, Civil Procedure Code is in wider sense to include both express as well as implied trust. The trustee de son tort who is acting as a de facto trustee is covered under Section 92, Civil Procedure Code. A person who without title chooses to take upon himself the character of trustee becomes trustee de son tort and is liable to account for what he has done or what he has received while so acting in the same as if he was a de jure trustee. Such person may be described as a de facto trustee or a trustee de son tort and is distinguishable from a trespasser. In case before me also allegations of the plaintiffs are that, the property in dispute is trust property, suit is against person who according to the plaintiffs are claiming themselves to be trustees may be through deeds dated 15-12-1960 which are under challenge in this suit and even if allegations of the plaintiffs are found to be true even then the defendants can be said to be in the position of de facto trustees or trustees de son tort and cannot be treated as trespassers as even according to plaintiffs also the defendants are not claiming any right personal to them with respect to properties in dispute. In view of this, the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the appellants-plaintiffs in the cases of Pragdasji Guru Bhagwandasji, AIR

1952 Supreme Court 143 and Bishwanath (supra), which were considered by the Division Bench in its judgment in *Association of Radhaswami Dera Baba Bagga Singh v. Gurnam Singh*,³ also have no application to the facts of this case as in the case of Bishwanath (supra) the suit was for declaration of title and possession against the trespasser who was claiming right in himself under void deed of transfer and was not claiming himself to be trustee or as de facto trustee. In the plaint there are clear allegations of breach of trust by Baba Deva Singh. The plaintiffs stated in the plaint itself that Baba Deva Singh had no right to alienate the property in dispute because he was only sole Trustee. Baba Deva Singh, by transfer deed dated 15-12-60, delegated duties, work and power which is not permissible for the trustee. It is also admitted fact that what has been done by Baba Deva Singh or what has been purported to be done by Deva Singh is in the capacity of sole Trustee in execution of both the deeds and not in his personal capacity. Therefore, the allegations of breach of trust in the plaint are not only merely mentioned but are the basis and reason for filing the present suit which are also the cause of action in the suit. The present suit is not for and in exercise of personal right of any of the plaintiffs but it is clearly mentioned in the plaint itself that the suit is filed on behalf of disciples of the Dera and the plaintiffs sought permission under Order 1, Rule 10, Civil Procedure Code to institute suit in representative capacity.

18. Therefore, it is held that the suit, as framed, falls within the ambit of Section 92, Civil Procedure Code.

19. Another argument of the learned counsel for the appellant is that even if the suit contains all ingredients of Section 92, Civil Procedure Code even then the suit of the plaintiffs cannot be rejected as barred under Section 92, Civil Procedure Code on the ground that Section 92, Civil Procedure Code has no application in the State of Rajasthan, therefore, the next question arises is whether Section 92, Civil Procedure Code is applicable to the trust properties situated in Rajasthan, for which the learned counsel for the appellants relied upon the provisions of Section 44 of the Rajasthan Public Trusts Act, 1959 (for short 'the Act of 1959') enacted for Rajasthan by the Rajasthan State Legislature in the year 1959. The Act of 1959 received the assent of His Excellency the President of India on 22-10-1959. Section 44 of the Act of 1959 comes in Chapter VIII. Sub-Section (1) of Section 44 of the Act of 1959 is as under :-

"(1) Notwithstanding anything contained in the Civil Procedure Code, 1908

(Central Act 5 of 1908), the provisions of Sections 92 and 93 of the said Code shall not apply to public trusts."

20. It is not in dispute that Section 44 of the Act of 1959 has come in force not only before filing of this suit but even before filing of earlier Suit No. 28/66. According to the learned counsel for the appellants this provision of law escaped the notice of the Division Bench of this Court and the Division Bench of this Court, without taking note of the statutory provisions, delivered the judgment in the earlier Suit No. 28/66 and wrongly held that the suit was not maintainable in view of the bar under Section 92, Civil Procedure Code. It was also submitted by the learned counsel for the appellants that the judgment of the Division Bench delivered in the case of Association of Radhaswami Dera Baba Bagga Singh (supra) is per incuriam as it runs contrary to the statutory provision.

21. The learned counsel for the respondents submitted that the Act of 1959 has no application nor the provisions of the Act of 1959 can govern or control the trust in dispute or its properties, for which, the learned counsel for the respondents submitted that reason for enactment of the Act of 1959, its scope and the background are required to be seen to judge whether in the present case, the provisions of the Act of 1959 can apply or not. According to the learned counsel for the respondents, the Act has been enacted to regulate and make better provisions of administrations of public, religious and charitable trust in the State of Rajasthan. If it will be held that the Act of 1959 applies to the properties of this trust then it will amount to give extra territorial jurisdiction to the authorities under the Act of 1959 by empowering the authorities to act beyond their territorial jurisdiction which is not permissible generally and in view of the various provisions of this Act of 1959 particularly, for this the learned counsel for the respondents referred the provisions of the Act of 1959 which are Sections 16, 17, 18, 22, 25, 28, 37, 38, 40, 41, 43 and Section 73 of the Act of 1959. It is also submitted that provisions of the Act of 1959 are nothing but substitute of Section 92, Civil Procedure Code, therefore, even if it is held that Act of 1959 is applicable and Section 44 of the Act of 1959 excludes the application of Section 92, Civil Procedure Code then also the suit of the plaintiffs is not maintainable as the plaintiffs have not obtained any permission to institute the suit under the Act of 1959, which is mandatory requirement for entertaining the suit. According to the learned counsel for the respondents in either case suit of the plaintiffs is not maintainable and this point was raised by the defendants before the trial Court, though the trial Court rejected the

plea of the defendants-respondents by order dated 27-8-1979 but the defendants-respondents can challenge the decision dated 27-8-1979 passed by the trial Court in this regular appeal even when the respondents have not preferred any appeal against the order dated 27-8-1979 nor they filed any cross-objection.

22. The Division Bench in the case of Association of Radhaswami Dera Baba Bagga Singh (supra) relating to this very subject-matter held that since the plaintiffs have not obtained the permission as required under Section 92, Civil Procedure Code for filing suit, therefore, the suit of the plaintiffs is not maintainable. It is true that the provisions of the Act of 1959, Section 44 in particular are not referred to in the judgment of the Division Bench of this Court which decided the appeal of the Association of Radhaswami Dera Baba Bagga Singh (respondent No. 1) in the earlier filed Suit No. 28/66. It is also true that Section 44 of the Act of 1959 specifically provides that the provisions of Section 92, Civil Procedure Code will not apply to the public trust. Therefore, it is to be seen what is effect of it.

23. It is provided in the Notification dated 28-6-1962 (No. F. (F) Rev./A/50) published in Rajasthan Gazette Part IV (C) dated 28-6-1962 that the Act shall apply to all public trusts throughout the State of Rajasthan whose gross annual income from all sources is not less than Rs. 3000/-, or the total valuation of the assets whereof is not less than Rs. 30,000/-. Chapters V to X came into force w.e.f. 1-7-1962. Despite that fact that Section 92, Civil Procedure Code was in force, the State of Rajasthan thought it proper to enact Rajasthan Public Trusts Act, 1959 containing Section 44 which excludes applicability of Section 92, Civil Procedure Code and containing complete procedure for regulating the suits with respect to the trust properties along with other provisions for control and management of trust and its properties. Under Section 92, Civil Procedure Code before amendment in Section 92, Civil Procedure Code in 1976, there was a requirement of obtaining written consent of the Advocate General to maintain the suit by private person or the Advocate General himself could have filed the suit under Section 92, Civil Procedure Code. There is amendment in Section 92, Civil Procedure Code from 1976 which provides that suit can be maintained with the leave of the Court also and two or more persons may institute suit under Section 92, Civil Procedure Code after obtaining leave from the Court instead of written consent of Advocate General.

24. I considered the submissions advanced by the learned counsel for the parties.

Foremost question arises in view of the rival submissions in this appeal is whether the Rajasthan Public Trusts Act, 1959 applies to the all public trusts, whether their principal offices and principal places of the business are situated beyond the territories of the State of Rajasthan but having some of trust property within the territory of the State of Rajasthan? And whether Section 44 of the Act of 1959 excludes the applicability of Section 92, Civil Procedure Code for all the suits which otherwise covered by the provisions of Section 92, Civil Procedure Code irrespective of the fact whether the trust is situated within the territories of the State of Rajasthan or not? To find out the answer of the above questions it will be necessary to look into the entire scheme of the framing of the Act of 1959.

25. The Rajasthan Public Trusts Act, 1959 starts as under :-

"An Act to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Rajasthan".

26. The preamble of the Act is self-explanatory and made it clear that aims and objects in enacting of the Act was to (1) make better provisions for the trust, (2) which are situated in the State of Rajasthan.

27. The public trust has been defined in sub-section (11) of Section 2 of the Act of 1959. As per the definition, "Public Trust" means express or constructive trusts, it can be public religious or charitable or both, in the definition of public trust, temples math, dharmada and other religious and charitable endowment and institution and society formed for religious or charitable purposes or for both are included. As per sub-section (2) of Section 1, the Act of 1959 extends to the whole of the State of Rajasthan. Section 17 casts duty upon the working trustee to apply for registration of public trust. This application for registration of the public trust is required to be submitted to the Assistant Commissioner who is having jurisdiction for registration of public trust. As per Section 16, only Assistant Commissioner, in whose local limits of the area of jurisdiction, principal offices or principal place of the business of the trust, which has been declared in the application under sub-section (1) of Section 17 will have jurisdiction to register the trust under the Act of 1959. Sub-clause (ii) of sub-section 4 of the Section 17 requires disclosure of place where principal office or the principal place of business of the public trust is situated. As provided in Chapter III of the above Act, the officers and employees are required to be appointed by the State

Government to administer, superintend and to carry out the provisions of the Act of 1959. The Devasthan Commissioner appointed under Section 7 of the Act of 1959, is the officer who shall have power of superintendence, administration and is responsible officer for the purpose of carrying out the provisions of the Act, and in Section 7 itself it has been made very clear that Devasthan Commissioner's jurisdiction extended to the territories to which the Act applies, and if read with sub-section (2) of Section 1, jurisdiction of the Devasthan Commissioner is limited to the territories of the State of Rajasthan only. As per Section 8, the State Government is to appoint Assistant Commissioner and define their local limits of the area in which the Assistant Commissioner shall have jurisdiction. The Assistant Commissioner is the in-charge of the registration of all public trusts as per Section 16. The Assistant Commissioner's jurisdiction has been restricted to local limits of area of his jurisdiction. Before registration of public trust, the concerned Assistant Commissioner in whose local limits the principal office or the principal place of the business of the trust is situated, is required to enquire under Section 18, in addition to other matters, to ascertain (i) whether a trust exists and whether such trust is the public trust; (ii) whether any property is the property of such trust; and (iii) whether the whole or any substantial portion of the subject-matter of the trust is situated within his jurisdiction. Above three matters are with respect to the existence of the trust, its nature, its property, and whether the property situated within the jurisdiction of the said Assistant Commissioner. Rest of the matter of inquiry under Section 18 are with respect to the constitution, succession, origin, nature, object of the trust, its income and expenditure. After holding inquiry, the Assistant Commissioner is required to record findings on the matters mentioned in Section 18 and, thereafter, the said Assistant Commissioner is required to make entries in the register. Such Assistant Commissioner is further required to publish the entries made under Section 21 at conspicuous place in the city, town or village where the principal office or principal place of business of the purpose is situated. The entries in register so made subject to other provisions of the Act of 1959 are made final and conclusive as per sub-section (2) of Section 21. But in entire Act of 1959 there is no specific provision dealing with the registration of trust whose principal office and principal places of the business are not situated within the territories of the State of Rajasthan.

28. A bare perusal of the above provisions of the Rajasthan Public Trusts Act, 1959, it is clear that the Act of 1959 is (1) a State legislation, and (2) extend to the territories of the State of Rajasthan only, (3) the officers have been appointed under Chapter III

of the Act having jurisdiction within the State of Rajasthan, and (4) the registering authority under Section 16 of the Act of 1959 is empowered to register only trust whose principal office or principal place of business is situated within the territorial jurisdiction of the above said registering authority. In the Act of 1959 there is no provision for appointing any officer vesting with the jurisdiction to entertain any application from the trustee of a trust, whose neither the principal office nor the principal place of business is situated within the territorial jurisdiction of the officer and authorities appointed under the Act of 1959. It is further relevant to mention here that as per the Section 25 of the Act of 1959, even if any part of the property of the public trust is situated within the local limits of the jurisdiction of more than one Assistant Commissioner, then the Assistant Commissioner in charge of registration of that trust is required to send the copy or the entries recorded in the register in respect of the public trust to the each Assistant Commissioner within whose jurisdiction any part of the trust property is situated and upon receipt of the copy of the entries, the Assistant Commissioner of the place, in whose territorial jurisdiction that part of the property situated, is under an obligation to enter the particulars thereof in the book prescribed for the purpose. Therefore, even when part of the property of the trust is situated within territory of jurisdiction of the Assistant Commissioner but the principal office and principal place of business is not situated within local limits of the jurisdiction of such Assistant Commissioner itself will not empower such Assistant Commissioner to register the public trust under the Act of 1959 is clearly demonstrated by Section 16 read with Section 25 of the Act of 1959. It is true that there is no provision under the Act of 1959 dealing with the situation when only part of the property of a trust is situated within the territories of the State of Rajasthan and neither principal office nor principal place of business is situated within the territories of the State of Rajasthan but the language of Sections 16, 17 and 18 unambiguously excludes, by implication, by making specific provisions for registration of public trust under the Act of 1959 which provides for establishing an authority who can accept application for registration of public trust only when principal office of the such trust are situated in local limits of the area of jurisdiction of any of the Assistant Commissioner appointed under the Act of 1959. When the Legislature has not empowered any of the authority to accept application on behalf of working trustee of the trust whose either principal office or principal place of business is not situated within the territorial jurisdiction of the concerned authority then interpreting Sections 16(1) and 17(1) in a manner making obligatory for the working trustee of the trust whose principal offices and principal places of business are situated beyond the

jurisdiction of such authority and empowering such authority to entertain application for registration of the trust will not only make the words "principal offices or the principal places of business" and the words "within the local limits of the area of his jurisdiction" in Section 16(1) superfluous but it will be empowering the Assistant Commissioner to entertain the application for registration of those public trusts for which they are not empowered by the Act of 1959. There appears no reason for holding that the Legislature has used the above words scrupulously. Rather there appears a clear intention of the Legislature; to make provision for registration of only those public trusts that are having their principal offices or principal places of business within the territory of the State of Rajasthan. Therefore, by entire reading of the Act of 1959 it is clear that the Act was enacted for making provisions for the public charitable trust whose principal offices or principal places of business are situated within the territories of the State of Rajasthan and this will be true meaning to the purpose for which the Act was enacted by saying :AN ACT to regulate and to make better provision for the administration of public, religious and charitable trusts in the State of Rajasthan.

29. There is another reason, which also supports the view taken above. Section 29 of the Act of 1959 puts a bar against the suit filed by the unregistered public trust. If it will be held that the Act of 1959 applies to all public trusts irrespective of the fact that neither their principal office/s nor their principal places of business is/are situated within the territories of the State of the Rajasthan, it will result into holding that suit for or on behalf of unregistered trust will not be maintainable in Rajasthan for want of registration though there is no provision for registration of the above such trust in the Act of 1959.

30. Since the State Legislature had intention to provide a better provision governing the field with respect to the public charitable trust and its properties and to provide substitute to Section 92, C.P.C. was felt necessary and, therefore, Section 44 was incorporated excluding the applicability of Section 92, Civil Procedure Code. The intention of the Legislature can be gathered, from various provisions of the Act of 1959 itself. Even before enactment of Act of 1959, Section 92, C.P.C. was already in existence covering the field of the litigation for the relief which are covered under Section 92, C.P.C. with respect to the public trust properties on the business of allegations of breach of trust requiring direction of the court for the relief as mentioned in Section 92, C.P.C. It appears that Legislature in the State of Rajasthan thought it

proper to make better provisions for not only with respect to litigation but also for administration of public, religious and charitable trust situated in the State of Rajasthan, therefore, the preamble of the Act says that the Rajasthan Public Trusts Act, 1959 is an Act to make better provisions for the trust situated in the State of Rajasthan. In this Act of 1959, not only above provisions for registration of the public trust are there but in the Act there are provisions for establishing Board and Committees under Chapter IV to draw attention of the State Government towards the difficulties experienced in the working of this Act of 1959 and to suggest amendments, to hold inquiry with respect to the origin, existence and nature of the trust and its property, constitution of trust, mode of succession to the office of the trust, its income and expenditure, provision for appeal against the orders passed by the Assistant Commissioner, provisions for filing civil suits for correction of entries made in the register, and for the management of the trust property as provided under Chapter VI and provision for sanction before transfer of property of the trust, provision for accounts audit and budget. In the Act of 1959, further provisions for getting permission by any person, having interest in public trust, for moving court of law for getting direction from the Court for the removal of trustee, appointing new trustee, for allocation of trust property for particular object of the trust, providing the scheme of management of the trust property, and for seeking direction of the Court for how to spend the funds of the trust when a original object of the trust has failed and all other directions which may be necessary. It appears that the State Government was conscious of the fact that there is specific provision, Section 92 in the Civil Procedure Code which intended to confer upon the Courts power in the matters relating to the administration of public trust where suit is filed by person interested in trust and there are allegations of breach of trust in relation to a public trust. It appears that the State Government wanted to have something different, covering more fields including the matter in which the person interested in the trust may seek remedy from court of law after obtaining authority, therefore, the Act of 1959 was enacted by specifically mentioning that the Act is enacted to make better provisions for administration of public, religious and charitable trust. With this object, in the Act of 1959, which is a complete Code providing various provisions as mentioned above, were included. The intention of providing the substitute to the Section 92, C.P.C. became clearer by sub-section (2) of Section 44 of the Act of 1959 itself. Sub-section (2) of Section 44 of the Act of 1959 provides a clause by which, even in pending cases in respect of public trust, wherein Advocate General or Collector exercising powers of the Advocate General is a party, it is to be substituted by the Rajasthan Commissioner. Therefore,

the Rajasthan Public Trusts Act, 1959 was enacted to achieve the object of providing better provisions for the public charitable trust, its management, and provisions for redress of grievances of the person interested in the public trust situated in the State of Rajasthan and to avoid any conflict, applicability of Section 92, C.P.C. was taken away and the Act of 1959 is in substitution of Section 92, Civil Procedure Code. Therefore, it is held that the Rajasthan Public Trusts Act, 1959 applies to the trust whose either principal office or (principal) place of business or both are situated within the State of Rajasthan and applicability of Section 92, C.P.C. is excluded, only for the trust, upon which the Act of 1959 applies.

31. Now, question arises whether the judgment delivered by the Division Bench of this Court reported in the case of *Association of Radhaswami Dera Baba Bagga Singh v. Gurnam Singh*,⁴ with respect to this very property involving the same controversy which is substantially involved in this suit is per incuriam because of the fact that the Division Bench proceeded on the premises that Section 92 applies without considering the effect of the Section 44 of the Act of 1959, it is apparent from the judgment of the Division Bench that there is no mention of Section 44 of the Act of 1959 in the judgment, it appears from the judgment that there is no mention of any argument on the basis of Section 44 nor there is any discussion while holding that the suit of the plaintiffs is under Section 92, C.P.C. Before addressing to this point it will be relevant to find out whether the Rajasthan Public Trusts Act, 1959 applies to the trust involved in this matter in the light of the decision given above with respect to the applicability of the Act of 1959 and exclusion of applicability of Section 92, C.P.C.

32. It is clear from the facts of the case as mentioned in the plaint itself that the plaintiffs have come with the positive averments in the plaint that the trust was created and established at Taran Taran, District Amritsar of Punjab. The schedule of the properties as disclosed in the plaint and list of the property as annexed with the plaint shows that all the properties of the trust are situated at Punjab. Only one of the properties purchased from the funds of the trust is situated at Sri Ganganagar. In entire plaint it is nowhere said that either the principal place of business or principal office of the trust is situated in Rajasthan. to maintain a suit, the plaintiffs were required to plead specifically where and how the cause of action accrued to the plaintiffs to file the suit in the Court where plaintiffs have filed the suit. In para No. 21 of the plaint, the plaintiffs only stated that property No. 6 of Schedule-Ka is situated in the jurisdiction of the trial Court, therefore, the Court has jurisdiction. Rather in the para No.1 of the plaint itself it is stated that Dera was established at Taran Taran, District

Amritsar, and is known as "Radhaswami Dera Baba Bagga Singh Ji Maharaj which suggest that the trust is situated at Taran Taran in Punjab. In entire plaint it is nowhere stated that the trust which was established at Taran Taran, District Amritsar was shifted to any place in Rajasthan or it has its any activity at Rajasthan except having one property. The deed of declaration of the trust and the deed of transfer dated 15-12-1960, which are under challenge in this suit, were also executed and got registered at Taran Taran, District Amritsar. It is relevant to mention here that earlier permission under Section 92, C.P.C. to file suit was sought at Punjab from Advocate General of the Punjab which was said to have been refused by the Advocate General of Punjab. It was duty of the plaintiffs to plead, how the suit of the plaintiffs is maintainable ? It is relevant to mention here that the plaintiffs were not only fully aware of the fact that earlier also suit for this very trust, its properties, challenging the same deed of declaration of trust and the deed of transfer dated 15-12-1960 which they are challenging in this suit, was filed and in that suit, the Division Bench of this Court has already held that suit is barred for want of compliance of Section 92, Civil Procedure Code. The plaintiffs in the plaint itself stated that due to rejection of the earlier suit by the Division Bench of this Court, the plaintiffs are filing present suit. Therefore, in these circumstances, if the plaintiffs still wanted to take a plea that despite above decision of the Division Bench of this Court, the suit of the plaintiffs is maintainable, it was the duty of the plaintiffs to pleaded specifically in the plaint itself, the grounds and basis on which the plaintiffs are seeking non-applicability of Section 92, C.P.C.

33. To show that by virtue of Section 44 of the Act of 1959, Section 92, C.P.C. does not apply to the case of the plaintiffs, plaintiffs were required to plead that the suit of the plaintiffs is governed by the provisions of the Act of 1959 and for that purpose also it was essential for the plaintiffs to plead that the principal place of business of the trust or the principal place of office or both are situated within the territories of the State of Rajasthan and the trust could have been registered at Rajasthan in accordance with the provisions of the Act of 1959 resulting into exclusion of Section 92, C.P.C. Unless pleadings are of such effect, how the Court can reach to a conclusion that Section 44 of the Act of 1959 applies and Section 92, C.P.C. is excluded ?

34. Since the permission as per the Section 92, C.P.C. is required to be sought and granted at the time of filing of the suit because Section 92, C.P.C. says that suit of such nature may be instituted after obtaining the leave of the Court, therefore, at this stage, the Court is also required to examine whether applicability of Section 92, C.P.C.

has been excluded or not. The Court while examining the matter for permission to institute the suit of such nature, can look only facts mentioned in the plaint. Therefore, the Court cannot avoid to decide the question of applicability or non-applicability of Section 92, C.P.C. on the basis of pleading of the plaintiff. In view of reasons mentioned above, there is no substance in the contention of the learned counsel for the appellant that the trial Court should not have decided this issue as preliminary issue.

35. As found in this case, the plaint allegations are not sufficient to hold non-applicability of Section 92, C.P.C. therefore, suit of the plaintiff is not maintainable for want of proper permission under Section 92, C.P.C.

36. In view of the discussion above, it is clear that as per the plaint allegations, Section 92, C.P.C. applies to the suit and applicability of Section 92, C.P.C. has not been excluded by Section 44 of the Act of 1959 in the facts of the present case. Therefore, in the light of above findings, now it is to be examined whether the judgment of the Division Bench of this Court reported in Radhaswami Dera Baba Bagga Singh's case (supra) can be said to be per incuriam? To find out whether the judgment is per incuriam, it is to be seen whether the judgment delivered by the Court runs counter to any statutory provisions or contrary to law laid down, which has binding force upon the Bench deciding the matter. When judgment can be said to be per incuriam, has been considered by the Hon'ble Apex Court in various judgments. Some of which are, (1) *Mamleshwar Prasad v. Kanhaiya Lal* ⁵ *A.R. Antulay v. R.S. Nayak* ⁶ *The State of U.P. v. Synthetics and Chemicals Ltd.* ⁷ and (4) *Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court, Chandigarh* ⁸ All above judgments were considered in subsequent decision of the Hon'ble Apex Court in : *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.* ⁹

37. In Mamleshwar Prasad's case (supra), the Hon'ble Apex Court held at page 909:-

"Where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission."

38. In A. R. Antulay's case (supra), the Hon'ble Supreme Court, after considering the decisions of Lord Goddard in *Moore v. Hewitt* ¹⁰ and *Penny v. Nicholas* ¹¹ held that:-

"per incuriam, are those decisions given in ignorance or forgetfulness of some inconsistent (sic) statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong,"

39. In *State of U.P. v. Synthetics and Chemicals Ltd.* (supra), the Hon'ble Apex Court held as under :-

" 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratum. English Courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered, 'in ignoratum of a statute or other binding authority.' (*Young v. Bristol Aeroplane Co. Ltd.* " ¹²

40. The sum and substance of the law laid down by the Hon'ble Apex Court is that a judgment can be said to be per incuriam provided the judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached. It may happen by obvious inadvertence or oversight.

41. In the light of the above reasoning's, if the judgment delivered by the Division Bench of this Court, reported in *Radhaswami Dera Baba Bagga Singh v. Gurnam Singh* ¹³ is seen, then it is clear that it nowhere lays down that Section 92 C.P.C. applies to all such cases despite Section 44 of the Act of 1959 excludes applicability of Section 92, C.P.C. Here in this case, as found in the preceding paras, Section 44 of the Act of 1959 has no application and the provisions of Section 92, C.P.C. has not been excluded then it can be presumed that the Hon'ble Judges of the Division Bench and the learned counsel for both the parties were fully conscious of the facts of the case and, therefore, the point of applicability of Section 44 of the Act of 1959 might not have been raised by the learned counsel and, therefore, no occasion arose for the Division Bench of this Court to mention the provision of Section 44 of the Act of 1959 and its effect. It cannot be presumed that simply because there is no mention of Section 44 of the Act of 1959 in the judgment of the Division Bench, it was not in the knowledge of the learned counsel as well as the members of the Division Bench of this Court. Hon'ble the Apex Court in the case of *Ambika Prasad v. State of U.P.*, ¹⁴ held as under at Page 1765 :-

"It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned."

42. It is clear that none of these misfortunes can be imputed to above Division Bench decision. Therefore, the judgment cannot be said to be per incuriam so far as it relates to decision given in the facts of the case which was before the Division Bench deciding the case of Association of *Radhaswami Dera Baba Bagga Singh v. Gurnam Singh*,¹⁵ But above judgment cannot be taken as authority laying down that despite applicability of Section 44 of the Act of 1959, provisions of Section 92, C.P.C. can be invoked.

43. In the alternative, the learned counsel for the appellants submitted that plaintiffs obtained the permission of the Court under Order 1, Rule VIII, C.P.C. which amounts to permission of the Court for filing suit under Section 92, Civil Procedure Code. The argument of the learned counsel for the appellants is taken note of just for rejection because of the fact that permission under Order 1, Rule VIII, C.P.C. is entirely different matter and permission under Section 92, C.P.C. has no relevance with permission under Order 1, Rule VIII C.P.C. It was also submitted by the learned counsel for the appellant that before amendment of the Civil Procedure Code, there was requirement of getting permission from the Advocate General and now after amendment the Court can grant permission to institute the suit, therefore, trial Court should not have dismissed the suit. There is no force in this submission also because of the fact that despite specific objection of the defendant about more than 29 years ago, the plaintiffs did not choose to apply for any permission of the Court under Section 92, C.P.C., that too knowing well that the Division Bench of the Court as back as in the year 1972 held that the suit is not maintainable for want of permission under Section 92, C.P.C. Still the plaintiffs filed the suit without seeking permission under Section 92, C.P.C. This makes the conduct of the plaintiffs very clear which amounts to abuse of the process of Court only. It was also submitted by the learned counsel for the respondents that the earlier permission was sought from the Advocate General, Punjab for filing the suit in the State of Punjab which was denied and, therefore, the plaintiffs have filed a suit in Rajasthan. Therefore, it is clear that the plaintiffs cannot take any benefit of the even amended provisions of Section 92, C.P.C. which was amended in the year 1977, about three years before the order passed by the trial Court

and now more than 20 years have already passed to the amendment but the plaintiffs did not choose to seek permission under Section 92, C.P.C.

44. The learned counsel for the respondents submitted that the defendants raised other objection with respect to the maintainability of the suit upon which issues Nos. 10, 11, 12 and 16 were framed. Those issues were decided by the trial Court vide order dated 27-8-1979. According to the learned counsel for the respondent, since the suit of the plaintiffs was dismissed by order dated 7-1-1980 and since this is a regular first appeal filed by the plaintiffs, therefore, the defendant can challenge the order dated 27-8-1979 in this appeal. 'To get the dismissal of the suit of the plaintiffs by saying that the suit of the plaintiffs is not maintainable in view of the objections taken by the defendant on the ground of territorial jurisdiction and in view of the bar created under Section 73 of the Rajasthan Public Trusts Act since it has been held that the provisions of Rajasthan Public Trusts Act has no application to the present controversy, therefore, there arise no question of bar of Section 73 coming in the way of the plaintiffs. The issue No.10, with respect to the territorial jurisdiction, was decided by the trial Court on the basis of the plaint averments and since the suit has been decided ultimately by order dated 7-1-1980 dismissing the suit of the plaintiffs without recording any evidence and it was permissible under law to do so and since the order dated 7-1-1980 is found by this Court in accordance with law, therefore, I do not incline to grant any permission to the learned counsel for the respondents to raise these pleas in arguments looking to the peculiar facts of the present case.

45. In view of the above reasons, there is no force in this appeal and the same is hereby dismissed with costs.

Appeal dismissed.

Cases Referred.

1. 1972 Raj LW 182: AIR 1972 Raj 263
2. AIR 1967 SC 1044
3. 1972 RLW 182
4. 1972 RLW 182
5. (1975) 2 SCC 232
6. (1988) 2 SCC 602

7. (1991) 4 SCC 139
8. (1990) 3 SCC 682
9. (2001) 6 SCC 356 AIR 2001 SC 2293
10. (1947) 2 All England Reporter 270 (KBD)
11. (1950) 2 All England Reporter 89 (KBD)
12. (1944) 2 All England Reporter 293)
13. 1972 RLW 182
14. AIR 1980 SC 1762
15. 1972 RLW 182