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GHAT TALAB KAULAN WALA

v.

BABA GOPAL DASS CHELA SURTI DASS (DEAD) BY LR
RAM NIWAS

B

(Civil Appeal No. 724 of 2020)

JANUARY 31, 2020

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Code of Civil Procedure, 1908:

C

s. 92 – Applicability of – To a suit by a Trust – Suit by Trust for mandatory injunction – Seeking direction against the defendant (sevadaar) to leave the management of the Mandir, building and other properties of the Trust – Trial Court declined to grant mandatory injunction to the defendant, but held that the plaintiff was entitled to rendition of accounts – First appellate Court decreed the suit – During pendency of second appeal, due to death of original

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defendant impleadment of his representative – High Court held that suit was not maintainable as requirements of s. 92 was not complied with – Appeal to Supreme Court – Held: Section 92 contemplates suit against a Trust – In the present case, the suit having been filed

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by the Trust, the procedure prescribed under Section 92 would not be applicable – The suit was maintainable and was rightly decreed by First Appellate Court – Trust and Charities.

Allowing the appeal, the Court

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HELD : 1. Section 92 of CPC contemplates a suit against a Trust either for removing any trustee; appointing new trustee; or vesting any property in a trustee etc. but the present suit itself is by a Trust against a *Sevadar*, therefore, the procedure prescribed under Section 92 of CPC would not be applicable in a suit by a Trust. Section 92 of CPC confers right on a person in case of any alleged breach of any express or constructive trust created for a public purpose of a charitable or religious nature. Since the Trust itself was the plaintiff, the finding of the High Court is clearly erroneous and not sustainable. [Para 12] [608-A-B]

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2. The fact is that the original defendant had been found to be *Sevadar* as per statement (Ex.P/1) given in the previous suit for permanent injunction. Therefore, legal representative of the original defendant will not have a larger interest than what was vested in the original defendant. The legal representative has been found to be doing service to the Temple as a member of public. The High Court has affirmed the finding that the legal representative could offer his services but he has not proved that he was appointed as Chela of the original defendant. Still further, the decree for rendition of accounts could be executed only against the deceased original defendant, therefore, after his demise, such decree cannot be executed. Therefore, the suit is maintainable and was rightly decreed by the First Appellate Court. [Paras 12 & 13] [608-C-D]

3. The apprehension of the respondent that the amount of compensation can be misused, is not tenable. The appellant is a registered Society. The appellant as a registered Society has statutory obligations. Such apprehension is misconceived and beyond the scope of the present suit and the appeal arising out of such proceedings. [Para 14] [608-E-F]

Bhagwan Dass and Others v. Jairam Dass AIR 1965
P & H 260 – referred to.

Case Law Reference

AIR 1965 P & H 260 referred to Para 5
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 724 of
2020.
From the Judgment and Order dated 18.07.2016 of the High Court
of Punjab and Haryana at Chandigarh in Regular Second Appeal No.
2263 of 1997.

V. N. Sinha, Sr. Adv., Puran Mal Saini, Ranbir Singh Yadav, Pati
Raj Yadav, Ritesh Patil, Advs. for the Appellant.

Ashok Sharma Nabhwala, Devender Mohan Verma, Ms.
Minakshi Vij, Advs. for the Respondent.

A The Judgment of the Court was delivered by

HEMANT GUPTA, J.

B 1. The plaintiff is in appeal aggrieved against an order passed by the High Court of Punjab and Haryana on 18th July, 2016 whereby the decree of two courts in its favour were set aside for the reason that Charan Dass (PW-1) was not competent to file suit as it could not demonstrate the nature of charities which the Trust had undertaken and that such suit is not maintainable without complying with the requirements of Section 92 of the Code of Civil Procedure, 1908¹. The Court held as under:

C “20. For maintaining the suit qua public Trust, the leave of the Court under Section 92 CPC is mandatory. Pleadings of the plaintiff are conspicuously silent about these facts. Secondly for maintaining the suit, plaintiff has to show that there was a complete dedication of the property in favour of the general public. There has to be evidence proving beyond pale of doubt that Trust is a public Trust. Though no instruction in writing is required, to dedicate property for religious or charitable purposes. Only a clear unequivocal manifestation of intention to create a Trust and vesting thereof in the donor as a trustee is required. No such manifestation of intention to create Trust and trustee thereof have come forth on record.”

E 2. The appellant had filed a suit for mandatory injunction directing the defendant Baba Gopal Dass (since deceased) to vacate the management of Mandir, building and other property. The appellant has alleged itself to be the owner of the suit property being managed by the Manager and Trustees. The defendant was said to be a *Sevadar*. In the said suit, the stand of the defendant was that the representatives of the plaintiff Manohar Lal and Charan Dass were never appointed as Managers or Trustees of the appellant and they fraudulently got their names entered in the revenue record. The stand of the defendant was that he did everything for the welfare of the Mandir and never sought instructions from the plaintiff and they have no right to seek rendition of accounts from the defendant. On the pleadings of the parties, the learned trial court framed the following issues:

“1. Whether the plaintiff is entitled to the injunction prayed for?
OPP.

H ¹ for short, ‘Code’

2. Whether the plaintiff is owner of the suit property as alleged in para No. 1 of the plaint? OPP. A

3. Whether the plaintiff have no locus standi to file the suit? OPP.

4. Whether no cause of action has arisen to the plaintiff for filing this suit? OPP.

5. Relief.” B

3. On issue Nos. 1 and 2, the learned trial court held that the defendant is *Sevadar* of plaintiff Trust and that the plaintiff does not want to keep the defendant as he is not properly watching the interest of the Mandir and that he has not rendered the accounts of the income of the Temple. The Court also found that the defendant is not claiming ownership of the property in question. The trial court considered the statement made by the defendant in the previous suit for permanent injunction filed by the plaintiff on 8th April, 1986 restraining the defendant from raising any construction in the shape of shops on the property in question. The Appellant examined Harban Singh (PW-3) an Advocate of the defendant in the previous suit, that the defendant admitted that the suit property belongs to the plaintiff and the defendant is working only as a *Sevadar*. The statement (Ex.P/1) reads as under: C D

“I have instructions from the defendant that the suit property belongs to the trust i.e. the plaintiff, where I am working only as a *Sevadar*. Whatever I will do, I will do for the welfare of the trust and any instructions given by the manager of the trust especially in regard to the construction of the shops I shall abide by in addition to the instructions pertaining to the manner in which shops are to be constructed and rent thereof collected.” E F

4. After returning such finding, the trial court declined to grant mandatory injunction to the defendant to vacate the Mandir but held the plaintiff was entitled to rendition of accounts.

5. The plaintiff alone filed first appeal aggrieved against the judgment passed by the learned trial court. The learned First Appellate Court relied upon a judgment reported as *Bhagwan Dass and others v. Jairam Dass*², to hold that the *Sevadar* is liable to be removed where *Sevadar* asserts title hostile and fails to keep regular accounts. G

² AIR 1965 P & H 260

- A 6. The defendant filed second appeal before the High Court aggrieved against the decree passed by the First Appellate Court. During the pendency of the second appeal, Baba Gopal Dass died and one Ram Niwas, claiming to be Chela of Baba Gopal Dass was ordered to be impleaded to represent the estate. Such order was challenged by the appellant before this Court in Civil Appeal No. 9638 of 2003 wherein it was held that Ram Niwas had been impleaded to represent the defendant but that will not clothe him to be successor in interest in the property and that the status of deceased Baba Gopal Dass as well as Ram Niwas have to be independently considered as a preliminary issue in the second appeal.
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- C 7. In second appeal, the first substantial question of law was framed at the time of admission of appeal whereas second substantial question of law was framed after the order passed by this Court. The same are reproduced hereunder:
- D “1. Whether the plaintiff Charan Dass could represent the Trust known as Ghat Talab Kaulan Wala which is also known as Prabhu Wala and whether the suit filed by the Charan Dass is maintainable?
- E 2. Whether status of the deceased Baba Gopal Dass as well as that of Ram Niwas, when independently considered, would make them Legal Representatives when Gopal Dass had mentioned himself to be ‘Sevadar’ and Ram Niwas as alleged Chela of Baba Gopal Dass?”
- F 8. In respect of the second substantial question of law, the High Court held that the defendant was only a *Sevadar* as admitted in his statement in the earlier suit and that Ram Niwas was impleaded as his legal representative. He is only a member of public who could offer his services in the place of deceased Defendant. The Court held as under:
- G “25. ...However, in case of public Trust every individual has right to serve. Baba Gopal Dass was also serving in the Mandir irrespective of the Mandir as a public Trust property or private Trust property. There was nothing to inherit like services rendered by Baba Gopal Dass. Inheritance of services of Baba Gopal Dass was open to all. No special status can be conferred upon Ram Niwas so far as inheritance of service/Sevadari is concerned.
- H 26. In view of aforesaid, any person from public can offer service to Mandir. Therefore, in view of first part of the order passed by

the Hon'ble Apex Court Ram Niwas was only impleaded for the purposes of representation in the present appeal without meaning anything on merits i.e. rights of Baba Gopal Dass viz-a-viz suit property. The second part of the order in the context of decision on the individual right of Ram Niwas is concerned, the same has to be decided that Ram Niwas is none else than any person from public at large, who could offer his service in place of Baba Gopal Dass. There are no pleadings, nor any evidence on record to show that Ram Niwas was ever appointed as Chela by Bhek or any other religious ceremonies were performed by competent authority or by Sadhu Samaj for appointing him in place of Baba Gopal Dass."

9. Thus, the second substantial question of law was decided, as mentioned above, that Ram Niwas was impleaded for the purpose of representation of the deceased in the appeal. The High Court found that there was no evidence that Ram Niwas was ever appointed by Chela or in any other manner but as any member of public, he was offering his services to the Temple.

10. While deciding first substantial question of law, the suit was found to be not maintainable. Learned counsel for the appellant vehemently argued that the High Court erred in law in finding that the suit is not maintainable in view of Section 92 of the Code as such provision is meant for invocation of jurisdiction against the Trust. Section 92 of the Code has no applicability in respect of a suit instituted by a Trust. It is pointed out that the appellant has filed suit through the Manager and Trustee as a private Trust. However, during the pendency of the proceedings, the Trust has been registered as a Society on 29th June, 2016 when Memorandum of Association of Ghat Talab Kaulan Wala Prabhu Lal Wala, Village Mundi Kharar, Tehsil Kharar, District S.A.S. Nagar was registered.

11. Learned counsel for the respondent argued that the appeal is filed by one Devinder Gupta who has no concern with the appellant, therefore, appeal itself is filed by incompetent person. It is also argued that the appellant has been paid a sum of Rs.1,48,09,884/- on account of acquisition of part of land whereas the respondent has apprehension that such amount will be misappropriated by the appellant.

12. We have heard learned counsel for the parties. We find that the order passed by the High Court in respect of first substantial question

- A of law is not sustainable. Section 92 of the Code contemplates a suit against a Trust either for removing any trustee; appointing new trustee; or vesting any property in a trustee etc. but the present suit itself is by a Trust against a *Sevadar*, therefore, the procedure prescribed under Section 92 of the Code would not be applicable in a suit by a Trust.
- B Section 92 of the Code confers right on a person in case of any alleged breach of any express or constructive trust created for a public purpose of a charitable or religious nature. Since the Trust itself was the plaintiff, the finding of the High Court is clearly erroneous and not sustainable. The fact is that Baba Gopal Dass has been found to be *Sevadar* as per statement (Ex.P/1) given in the previous suit for permanent injunction.
- C Therefore, Ram Niwas as legal representative of Baba Gopal Dass will not have a larger interest than what was vested in the original defendant. Ram Niwas has been found to be doing service to the Temple as member of public. The High Court has affirmed the finding that Ram Niwas could offer his services but he has not proved that he was appointed as Chela of Baba Gopal Dass. Still further, the decree for rendition of accounts could be executed only against the deceased Baba Gopal Dass, therefore, after his demise, such decree cannot be executed.
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13. In view thereof, the finding of the High Court on first substantial question of law is set aside and the suit is found to be maintainable and was rightly decreed by the First Appellate Court.

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14. We find that the apprehension of the respondent that the amount of compensation can be misused is not tenable. The appellant is a registered Society. The appellant as a registered Society has statutory obligations. We find that such apprehension is misconceived and beyond the scope of the present suit and the appeal arising out of such proceedings.

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15. Consequently, the present appeal is allowed. The order of the High Court in respect of first substantial question of law is set aside and the suit is decreed.