

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 67 of 2022

Hansdas disciple Swami Gangadas and others Appellants

Vs.

Mahant Hiradas disciple Mahant Ganga Das Ji Respondent

Present:-

Mr. Mani Kumar, Advocate for the appellants through video conferencing.

Mr. Narendra Bali, Advocate for the respondent.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against the order dated 22.11.2021, passed in Original Suit No. 182 of 2017, Mahant Hiradas Vs. Hansdas and others, by the court of 2nd Additional Civil Judge (Senior Division), Haridwar ("the suit"). By it, the appellants have been restrained from interfering into the possession of the respondent and the management of the property in dispute.

2. Heard learned counsel for the parties and perused the record.

3. The respondent filed the suit. According to it, Mahant Gangadas purchased some property in the year 1985 and had constructed an Ashram on it. The respondent has been managing the Ashram. Mahant Gangadas executed a registered will on 17.05.2004 and bequeathed the property in favour of the respondent. He has been managing the property of the Ashram. After the death of Mahant Gangadas, his name has also been entered into the Municipal records, but now the appellants are interfering into it.

4. The appellants have filed objection and have denied execution of will by Mahant Gangadas in favour of the respondent.

In the suit, an application for temporary injunction was filed by the respondent, which has been allowed by the impugned order, which is impugned herein.

5. Learned counsel for the appellants submits that there were multiple wills executed by Mahant Gangadas. The attesting witnesses of the will allegedly executed in favour of the respondent, have filed affidavits, which doubt the execution of will in favour of the respondent. It is also submitted that Mahant Gangadas was 114 years of age in the year 2004, when allegedly will was executed. He may not be considered to be in a position to execute the will on that date.

6. On the other hand, learned counsel for the respondent submits that the will is genuine. There are attesting witnesses to it. Mahant Gangadas had absolute right to execute the will.

7. At the initial stage, the Court has to see the *prima facie* case, balance of convenience and irreparable loss so as to decide an application for temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908.

8. In para 16 of the impugned order, the Court has recorded that will in favour of the respondent is the last will of Mahant Gangadas and the name of the respondent has also been entered in the Municipal records. Accordingly, the court concluded that *prima facie* case is made out against the appellants. Thereafter, the court proceeded to decide the questions of balance of convenience and irreparable loss and recorded conclusion thereafter.

9. Having considered, this Court does not see any error in the impugned order. Therefore, this Court does not want to

interfere with the impugned order. Accordingly, the appeal deserves to be dismissed.

10. The appeal is dismissed.

11. At this stage, learned counsel for the appellants submits that the issues that have been raised by the appellants in this appeal may be permitted to be raised by the appellants in the civil suit that is pending before the court below.

12. Needless to say, at the stage of decision of temporary injunction application, the case is not decided in full. It is based on some documents and affidavits, when *prima facie* case, balance of convenience and irreparable loss are considered. Finally, the parties have to lead their evidence and prove their respective cases. They are free to do so in this case, as well.

(Ravindra Maithani, J.)
12.06.2026

Jitendra