

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3295 of 2014 (O&M)
Date of decision: 13.03.2015

Sukhdev Muni

... Petitioner

versus

Kewal Dass and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. M.L. Saggar, Senior Advocate with
Mr. Sunny Saggar, Advocate for the petitioner.

Mr. J.S. Dhaliwal, Advocate for the respondents.

K.Kannan, J.

The petition is a challenge to an order passed by the trial Court in the petition filed by the defendant in suit, who is the present petitioner, for rejection of a plaint.

The contentions raised before me to assail the order are that the plaintiffs do not have locus standi to file the suit and seek for any permission under Section 92 CPC, since plaintiff Nos. 2 to 4 are *Sikhs* and do not come within the *Udasian* Sect who claim themselves as followers of the *Dera*, in which the defendant claims to be a Mohanmim. Learned senior counsel would refer to the fact that plaintiff Nos. 2 to 4 carry suffixes '*Singh*' in their names and it is referred in the plaint that plaintiff Nos. 2 to 4 are *Jats* and *Zamindars* and according to the petitioner, they would show that they cannot be themselves as followers of *Udasian* Sect to claim the relief of removal of the defendant as *Mohatmim*.

The counsel refers to the decision of Hon'ble the Supreme Court in *Mahant Harnam Singh Vs. Gurdial Singh and another*, AIR

67 SCC 1415, that considered the validity of the institution of the suit under Section 92 CPC where the persons were claiming that they had an interest in running a free kitchen and serving free food. The plaintiffs were *Lambardars* and followers of Sikh religion and claimed that they had an interest in the maintenance of the Trust which carry some charitable activities. The Court was considering the nature of Trust in the plaint described as Gurdwara Jhandawala and found it to be established and run by *Nirmala Sadhu*. The Court was holding that *Nirmala Sadhus* are not Sikhs and the plaintiffs claiming as *Lambardars* could not be said to have any interest in such a *Dera* to maintain the action.

I asked the counsel to show to me anywhere from the plaint or from his application for rejection of the plaint that there is any reference to any of the plaintiffs as not having interest in the affairs of the *Dera*. The counsel has no more answer than to point out the Sikh suffixes in the names and refers to the caste names in the body of the plaint for plaintiff Nos. 2 to 4. Learned senior counsel would turned the tables on the plaintiffs and defy the plaintiffs to show that they have declared themselves to be *Udasins*. In the first place I would not find a requirement in the manner stated by the learned counsel for there is adequate plea that the plaintiffs have set forth as regards their own interest in the plaint. In paragraph No.8 which says that the plaintiffs are worshippers of *Dera* and work for the betterment of the dignity of the *Dera*. I cannot take the contention of the plaintiffs being not interested in the affairs by reference to the judgment of Hon'ble the Supreme Court which had definite materials and pleadings that helped decide the case against the plaintiffs to maintain the suit. I have not the benefit of any clarity in the defence in that regard. I reject, therefore, the argument that the plaintiffs have no locus standi to institute the suit.

The second contention is that the *Mohatmim* was approved by the Government and he was notified as such. According to the senior counsel for the petitioner, any action for removal cannot be done

without making the government a party. If a relief is against the defendant and if the prayer in the suit is for removal of *Mohatmim*, unless there is any requirement in any law that after an approval from the Government for appointment of Mohatmim, his removal cannot be effected without the concurrence of Government, the presence of government is not necessary. I have not been shown through any particular notification of the government that removal of a *Mohatmim* approved cannot be done without reference to Government. The said objection must also go.

Learned counsel would also argue that the suit under Section 92 itself is not competent for it is not like any other public charity where the State has no role to play. The contention is, if the situation where the State has an active interest and notification has also been made, without a prayer and without a challenge to the notification itself, suit cannot lie. In my view, such a contention is untenable for a notification will follow what the court declares. If the suit were to be dismissed, the notification will continue. If on the other hand, the suit were to be decreed and defendant is ordered to be removed as *Mohatmim*, there shall be a due notification of the incumbent in the office as the civil court approves of.

I will, therefore, not find any merit in any of the objections taken to the maintainability of the suit on the grounds urged before me. The order already passed is maintained and the civil revision petition is dismissed with above observations.

(K.KANNAN)
JUDGE

13.03.2015
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