

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.1385 of 1993

Date of Decision:21.03.2018

Rajendra Deva Orphange Trust and others

...Appellants

Versus

Shri Guru Singh Sabh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.B.R.Mahajan, Senior Advocate with
Mr.P.C.Chaudhary, Advocate for the appellants.

Mr.M.S.Khaira, Senior Advocate with
Mr.D.S.Randhawa, Advocate and
Mr.R.S.Sidhu, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below. The plaintiff filed a suit for declaration that defendant No.1 is its Sub Committee and for permanent injunction, restraining defendants No.1 and 3 to 8 from acting otherwise than as a Sub Committee of the plaintiff. It was further claimed that defendants No.2, 9 and 10 be restrained from taking part in the proceedings of defendant No.1 qua the suit property. The mandatory injunction was also claimed against defendants No.1 and 3 to 8 for allowing defendants No.11 to 13 to work as a member of defendant No.1-Sub Committee and also for direction to submit half yearly report of expenses and get its budget sanctioned from the plaintiff.

The plaintiff, i.e. Shri Guru Singh Sabha filed the aforesaid suit, claiming that defendant No.1-Rajindra Deva Orphange i.e. one of the

appellants is its sub committee. The plaintiff claim that defendant No.1 is working under its aegis.

The defendants contested the suit and pleaded that defendant No.1 is an independent Trust and the plaintiff has nothing to do with its property.

Both the courts, after appreciating the evidence, have recorded a finding of fact that defendant No.1 is in fact a sub committee of the plaintiff. Both the courts after considering the rules framed by both the organizations, i.e. plaintiff and defendant No.1 and noticing that the plaintiff has power to nominate seven members of the Managing Committee of defendant No.1 out of total 11, have held that it is in fact a sub-committee of the plaintiff.

This Court has heard the learned senior counsels for the parties at length and with their able assistance gone through the impugned judgments passed by the courts below and the record.

Learned senior counsel for the appellants has submitted that the present suit was not filed by authorized representative of the plaintiff. He has further submitted that before the first appellate court, an application for additional evidence was filed so as to produce on record a certified copy of the judgment. The court dismissed the application on the ground that no argument has been addressed at the time of final arguments to press the application. He has submitted that once an application has been filed and it was being taken up with the main case, no separate argument or prayer for allowing the application for additional evidence was required. He has also submitted that the suit filed by the plaintiff is not maintainable as

consequential relief of possession has not been claimed.

On the other hand, learned senior counsel for respondent No.1 has brought to the notice of this Court that the plaintiff/Sabha had passed a resolution on 8.1.1972, authorizing Subedar Amar Singh to file the suit on its behalf. The suit was filed on 7.3.1972, however, in the written statement, maintainability of suit was disputed, therefore, the suit was withdrawn with permission to file fresh one. He has further submitted that on the same cause of action, the present suit was filed. He has next submitted that no fresh resolution was required to be passed by the plaintiff-organization as the present suit was filed on the same cause of action. He has further submitted that since the counsel for the defendant-appellant did not press the application for additional evidence, therefore, the court rightly rejected the same. He has also submitted that in the present case, the plaintiff is praying that defendant No.1 is its Sub Committee. Once defendant No.1 is declared as a Sub Committee of the plaintiff, the possession obviously is with the plaintiff through its sub committee. Hence, relief of possession was not required to be prayed for.

This Court has considered the submissions of learned counsel for the parties.

As far as first argument of the learned senior counsel for the appellants is concerned, it is suffice to notice that resolution dated 8.1.1972 is available on the file. The first suit filed was withdrawn with permission to file fresh one. The second suit, i.e. the present suit was filed on the same cause of action. Such being the position, this Court does not find any substance in the argument raised by the learned senior counsel for the

appellants. Once it is admitted that organization had taken a decision to institute a civil suit and authorized Subedar Amar Singh on its behalf, the suit filed by the plaintiff through Subedar Amar Singh would be competent till the authorization given is withdrawn. Learned senior counsel for the appellants could not point out that this suit was based on a different cause of action.

Next argument of the learned senior counsel for the appellants is with regard to the application for additional evidence to produce certified copy of judgment, which has been dismissed by the court as not pressed. In this regard, a careful reading of the judgment passed by the learned first appellate court clearly proves that the learned counsel for the appellants before the first appellate court did not press the application for additional evidence at the time of final arguments. In this situation, the court rightly recorded that the application has not been pressed and hence dismissed. No exception to the aforesaid observation can be made. However, in the interest of justice this Court allowed the learned counsel to refer the aforesaid judgment, which was sought to be produced in additional evidence. It is asserted that in that judgment defendant No.1 has been held to be Trust. It is not disputed that the plaintiff is not a party to the aforesaid suit. Hence, aforesaid judgment would not improve the case of the defendant-appellant.

Last argument of the learned senior counsel for the appellants is that since the relief of possession has not been claimed, therefore, the suit is barred under Section 34 of the Specific Relief Act, 1963. In this regard, it is significant to note that the plaintiff had claimed that defendant No.1 is its Sub Committee hence working under its control. Once both the courts have

found that defendant No.1 is in fact a Sub Committee of the plaintiff, obviously the possession is of the plaintiff through defendant No.1. Under these circumstances, proviso to Section 34 of the Specific Relief Act would have no application. Proviso to Section 34 of the Specific Relief Act gives discretion to the court to dismiss the suit if the court comes to a conclusion that the plaintiff being able to seek further relief than a mere declaration of title, omits to do so. In the present case, this Court does not find that the plaintiff has omitted to seek any further relief which was available on the day the suit was filed.

No other argument was raised.

In view of what has been discussed hereinabove, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below. The Regular Second Appeal is dismissed. Pending applications, if any, shall also stand disposed of.

21.03.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No