

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RA-RS-113-C-2018 (O&M)
IN RSA-1385-1993
Date of Decision:16.11.2018

Rajendra Deva Orphanage Trust and others

...Review Applicants/appellants

Versus

Shri Guru Singh Sabha and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.D.V.Sharma, Sr. Advocate with
Mr.Tushar Sharma, Advocate for the review applicants-
appellants.

ANIL KSHETARPAL, J.

CM-16283-C-2018

Application is allowed. Exemption sought is granted.

CM stands disposed of.

CM-16284-C-2018

For the reasons mentioned in the application, which is supported by an affidavit, delay of 150 days in filing the review application is condoned.

CM stands disposed of.

Review Application

This review application has been filed after withdrawing the Special Leave Petition filed against the judgment dated 21.3.2018. The order passed by the Hon'ble Supreme Court is extracted as under :

“The learned senior counsel appearing for the petitioners seeks leave to withdraw this Special Leave Petition

with liberty to the petitioners to approach the High Court for appropriate clarification regarding the ownership of the properties of the Trust.”

With liberty as above, the Special Leave Petition is dismissed as withdrawn.

We make it clear that we have not considered the matter otherwise on merits.”

This Court has heard the learned senior counsel appearing for the review applicants/appellants and with his able assistance once again gone through the judgments passed by both the courts below and the record.

A reading of the order passed by the Hon'ble Supreme Court, it is apparent that review applicants-appellants withdrew the Special Leave Petition so as to seek clarification regarding ownership of the properties of the Trust.

In this regard, it may be noticed that the regular second appeal was decided after hearing the learned senior counsels representing the parties. The issue of ownership of the properties of the Trust was not raised at the time of disposal of the appeal.

It may be noted that the learned trial court as well as the learned first appellate decided the suit and the appeal on the basis of issues framed by the learned trial court, which are extracted as under:-

- 1 *Whether the plaintiff society is registered under the Societies Registration Act?OPP*
- 2 *Whether Subedar Amar Singh has been duly authorised by the society to file this suit?OPP*
- 3 *Whether the defendant No.1 is a sub-committee of the plaintiff as alleged in para No.3 of the plaint if so, its effect?OPP*
- 4 *Whether the plaintiff has authority to appoint or expel seven members of the managing committee of defendant*

No.1 as alleged in the plaint?OPP

5 *Whether the suit for declaration and injunction as prayed for is maintainable?OPP*

6 *Whether the suit is properly valued for the purpose of court fee and jurisdiction?OPP*

7 *Whether the suit is within time?OPP*

8 *Whether the plaintiff is estopped by his act and conduct from filing the suit?OPP*

9 *Whether the plaintiff can claim the injunction with respect to defendant Nos. 11 to 13?OPP*

9-A *Whether the plaintiff has no locus standi to file the present suit?OPD*

9-B *Whether properties of defendant No.1 are not property described, if so, to what effect?OPParties.*

9-C *Whether the plaintiff cannot claim relief of mandatory injunction against defendant Nos. 11 to 13, if so, what effect?OPD*

9-D *Whether suit cannot proceed against defendant Nos.4 as alleged in para No.13 of written statement (Preliminary objections)?OPD*

9-E *Whether description of defendant No.1 is proper, if so, to what effect?OPParties.*

9-F *Whether S. Manohar Singh was expelled from the membership of plaintiff of plaintiff and orphange sub committee vide resolution No.521 dt. 20.8.57?OPP*

9-G *Whether Lt. Col. Prem Singh was nominated in place of S. Manohar Singh vide resl.No.392 of 9.10.59?OPP*

9-H *Whether S.Gian Singh was sent by the plaintiff to the Orphange Sub Committee?OPP*

9-I *Whether S.Gian Singh Rarewala, Bharpur Singh, S.Iqbal Singh Tiwana were appointed by committee as its members and Sh. Babu Singh, Dalip Singh and Prem Singh were removed by defendant No.1 vide resolution dated 29.10.63 duly communicated to the plaintiff, if so, to what effect?OPD*

9-J *Whether w/ statement dated 20.10.80 is not properly verified, if so, its effect?OPP*

9-K *Whether Sh. Devinderpal Singh has been authorised to file written statement?OPD*

9-L *Whether defendants passed any resolution to engage Shri R.N.Verma as counsel for defendant No.1 and its effect?OPD*

10 *Relief.*

On the basis of the aforesaid issues, this Court decided regular second appeal.

Still further, it may be noted that with regard to ownership of the Trust, learned first appellate court had recorded following findings in para 35 of its judgment, which are extracted as under:-

“According to the rules of the plaintiff-Sabha all the property of the plaintiff-Sabha shall vest in the Sabha. There is no evidence that the property of Rajinder Deva Orphange Sub Committee vests in the plaintiff. On the other hand, plaintiff has claimed relief in the plaint that the plaintiff-society is entitled to management of the properties mentioned in the heading of the plaint and defendants are not entitled to manage and possess the same and the mandatory injunction be granted restraining the defendant from interfering in the management of the plaintiff-society from a disputed property and the plaintiff be put into symbolical possession of the same. This relief mentioned in para E was given up by the plaintiff as a result thereof Rajinder Deva Orphange Trust is entitled to manage the property held by it and possess by it and there is documentary evidence that all the property is held in the name of Rajinder Deva Orphange and not in the name of Guru Singh Sabha, plaintiff.”

It was probably because of the aforesaid findings of the learned first appellate court, learned senior counsel for the appellants did not

address argument on the aforesaid aspect of the matter.

A new senior counsel appearing for the applicants/appellants in the review application made an attempt to re-argue the appeal, which in the considered opinion of this Court is not permissible.

In view of the aforesaid discussion, the review application is dismissed.

16.11.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No