

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 4149 of 2019 (O&M)
Date of Decision:29.10.2019**

Pran Nath (since deceased) represented by Lrs and others

---Appellants

vs.

Rudhar Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Namish Sodhi, Advocate
for the appellants

Rekha Mittal, J.

CM No. 11501-C of 2019

Allowed as prayed for. Delay of 3 days in refiling the appeal stands condoned.

Main case

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit filed in representative capacity under Order I Rule 8 read with Section 92 of the Code of Civil Procedure (in short “CPC”) for removal of appellants-defendants from management and settling a scheme for proper management, administration, appointment and removal of trustee, income and expenditure account, maintenance and upkeep of public temple “Shivala Shiv Ji

Maharaj”, Kalanaur, Tehsil and District Gurdaspur and also regarding its properties shown as ABCDEFGHIJKLM and NOPQ in the site plan, constructed in the land, detailed and described in the schedules i.e. land measuring 66 kanal 6 marlas detailed in sub para (a) and 37 kanal 11 marlas in sub para (B) of head note of the plaint, was decreed by the trial court to the following effect:-

“.....the defendants are removed from the management of the affairs of the temple and SDM, Kalanaur is appointed as receiver of the said temple till proper scheme is framed by Deputy Commissioner, Gurdaspur regarding proper management and administration of the temple and till then the administration of the temple will be looked after by receiver and the Deputy Commissioner is also required to chalk out a scheme in consultation with inhabitants of the village and should also constitute a committee consisting of nine members preferably the persons who are retired officials with clean record and respectable persons of the village also with clean record and with passage of time, preferably within six months, the management and affairs of the temple would be transferred to the said committee and the committee shall also run the affairs of the temple by properly maintaining the balance sheet of the temple with regard to all the income and expenditure of the temple and the said committee shall also look after the other immovable property of the temple and if any person is in unauthorized possession over the property of the temple, the

said committee shall have the power to institute a suit on behalf of the temple for taking possession of the property of the temple. Receiver i.e. SDM, Kalanaur shall maintain proper balance sheet of the proceeds of the temple and would also demarcate the land of the temple and prepare proper list of the properties of the temple and as to who are in possession of the same.”

Feeling aggrieved against the decree and judgment passed by the trial court, the defendants-appellants preferred Civil Appeal No. 2 dated 10.1.2018 but the same was dismissed by the Additional District Judge, Gurdaspur as the first Appellate Court recorded its conclusion that no fault can be found in the well reasoned judgment passed by the trial court.

Still feeling dissatisfied, the present appeal has been preferred by Pran Nath and others.

Counsel for the appellants has assailed concurrent findings recorded by the courts primarily on two counts namely:-

- (i) The suit was instituted under Section 92 CPC for removal of the appellants from management of the alleged property of public temple (Shivala Shiv Ji Maharaj, Kalanaur) but the respondents-plaintiffs did not obtain leave of the civil court for maintaining the suit, in compliance with the provisions of Section 92 CPC.
- (ii) The courts decreed the suit in respect of entire land measuring 66 kanal 6 marals but as per jamabandi for the year 2012-13 Ex. D10, Shivala Shiv Ji Maharaj is recorded

to be co-owner only to the extent of 3/10 share and the remaining land is recorded to be co-owned by various persons i.e. Sukhdai wd/o Shankar Nath and others.

To substantiate his plea with regard to suit being not maintainable for want of leave of the court, it is argued that the courts have wrongly construed that allowing application to file suit in representative capacity by invoking Order I Rule 8 CPC would also amount to grant of permission under Section 92 CPC. It is further argued that provisions of Section 92 and Order I Rule 8 CPC have been enacted with an entirely different intent and operate in different situations, therefore, permission granted under Order I Rule 8 CPC would not cure the defect of non-grant of leave under Section 92 CPC. For this purpose, reliance has been placed upon judgments of Hon'ble the Supreme Court **R. Venugopala Naidu vs. Venkatarayulu Naidu Charities AIR 1990 SC 444** and **Bhupinder Singh vs. Joginder Singh (dead) by Lrs and others Civil Appeal Nos. 6067 of 2010 decided on 18.9.2019**. Further reference has been made to judgments of this Court **Maharishi Dayanand Education Society vs. Satyendra Bhadana 1999(1) RCR (Civil) 424**, **Sushil Kumar Bansal and others vs. Surinder Pal Sharma and others 2007(1) RCR (Civil) 167** and **Parmod Kumar and another vs. Anand Basia and others 2015(4) RCR (Civil) 655**.

Counsel would further argue that finding of the court in appeal that leave under Section 92 CPC was granted by the High Court while disposing of Civil Writ Petition No. 1611 of 1999 titled 'Pran Nath and others vs. State of Punjab and others' vide judgment dated 7.2.2011 is the

result of mis-appreciation of observations recorded in para 18 of the judgment *ibid*. In addition, counsel made an attempt to argue that in the said writ petition, Annexure P-1 pertains to *muafi* dated 30.9.1856 in respect of area measuring 45.11 acres and not qua land measuring 66 kanal 6 marlas, subject matter of instant suit.

Counsel has not raised any arguments in respect of land measuring 37 kanal 11 marlas which was previously owned by the gram panchayat. However, with regard to land measuring 66 kanal 6 marlas, he has disputed ownership of entire land by Shivala Shiv Ji Maharaj by relying upon jamabandi for the year 2012-13 Ex. D10. It is argued that respondents-plaintiffs did not produce any documentary evidence/ revenue records to establish that entire land measuring 66 kanal 6 marlas belonged to Shivala Shiv Ji Maharaj, stated to be a public trust.

I have heard counsel for the appellants, perused the paper book and records of the civil suit as well as Civil Writ Petition No. 1611 of 1999 decided on 7.2.2011, filed by Pran Nath and others against Financial Commissioner, Punjab Chandigarh and others including Shivala Prabhandhak Committee, village Kalanaur.

The Appellate Court, in para 24 of the judgment, has noticed order dated 7.2.2011 passed by this court marked as Ex. P21. In the succeeding para, it has been held that the Punjab and Haryana High Court granted permission to interested persons to file a civil suit under Section 92 CPC with regard to alienation and controversy which was going on between the parties to the lis. In that situation, no further permission of the court to file suit under Section 92 CPC was required. In para 26, the court has held

that application under Order I Rule 8 CPC seeking permission to file the suit in representative capacity was allowed vide order dated 9.9.2016 and the same attained finality. Further held that purpose of permission under Section 92 CPC and Order I Rule 8 CPC is always to protect common interest and to see that persons coming to the court are advancing the cause of justice at large.

The first question that falls for consideration is “whether order dated 7.2.2011 Ex. P21 passed in the aforesaid writ petition can be construed as leave of the court to file the present suit?”.

Before advertng to order Ex. P21, it is appropriate to note that Pran Nath and others filed the aforesaid writ petition by invoking Article 226 of the Constitution of India for issuance of writ of certiorari or such other appropriate writ for quashing order of Collector, Gurdaspur (Annexure P-4), Commissioner, Jalandhar Division, Jalandhar (Annexure P-5) and Financial Commissioner, Taxation, Punjab Chandigarh (Annexure P-6) whereby the Collector, Gurdaspur made an order that land owned by panchayat Deh should revert back to village panchayat for benefit of residents of the village and land measuring 66 kanal 6 marlas originally granted to Shivala Shiv Ji Maharaj, for its maintenance should be resumed by the Government. Since orders passed by the revenue authorities deprived the writ petitioners (appellants herein) of their right to manage the aforesaid two sets of land in respect whereof there were allegations of mismanagement and misappropriation, the aforesaid writ was filed. This court set aside the impugned orders with the observations that administrative authorities could not exercise the powers bestowed upon

civil court in relation to removal/appointment of a trustee (Mohtmin) in the purported exercise of their executive powers under the Punjab Land Administration Manual, the impugned orders are liable to be quashed and so ordered. In para 16 of the judgment, the court held that this shall, however, not be taken as disapproval of the allegations made by them against the petitioners. A relevant extract from para 18 of the judgment, germane to present controversy, quoted thus:-

“Learned State Counsel points out and rightly so that in the wake of the allegations of misappropriation of the properties and proceeds of the deity, these properties or other assets need to be safeguarded by this Court so as to meanwhile enable the aggrieved persons to approach the Civil Court. It is accordingly directed that no sale deed, transfer deed, gift/mortgage deed or any instrument encumbering the properties of the Shivala in question shall be executed by the petitioners or any one else nor it shall be entertained or registered by the Revenue Authorities of District Gurdaspur and/or any where else till the decision of the Civil Court except with the leave of this Court or the Civil Court. Such a transaction if takes place shall tantamount to fraud on the Trust and shall be null and void. If the petitioners have illegally transferred any property of the deity during the pendency of this writ petition, the interested persons shall be at liberty to challenge such transactions by way of civil suit that may be instituted in terms of the liberty already granted. If any interested person does not come forward, the District

Administration is directed to take immediate steps and approach the Advocate General, Punjab to institute the civil suit under the provisions of Section 92 of the Code.”

A plain but careful reading of the aforesaid extract leaves no manner of doubt that this court while disposing of the writ petition has taken note of allegations of misappropriation of the properties and proceeds of deity and even provided certain safeguards to protect properties of the Shivala and proceeds of deity till the aggrieved persons approach the civil court for necessary relief. The court further held that in case any interested person does not come forward, the District Administration is directed to take immediate steps and approach the Advocate General Punjab to institute civil suit under the provisions of Section 92 CPC.

Taking into consideration the import and spirit of observations made in para 18, extracted hereinbefore, I find it difficult to subscribe to contention of counsel or differ with findings of the Appellate Court that necessary leave to institute the suit under Section 92 CPC had already been granted by the High Court while disposing of civil writ petition filed by Pran Nath and others. On the other hand, if Sh. Pran Nath and others had any grievance to express against observations recorded in para 18 aforesaid, at best, they could take recourse to appropriate remedy, in accordance with law. As order passed by this court has attained finality, it is not open for the appellants to argue that suit filed by interested person could not be maintained without leave of the court under Section 92 CPC.

The contention raised by counsel by relying upon document Annexure P1 appended with the writ petition is patently misconceived, in

view of the fact that orders passed by revenue authorities/District Administration, subject matter of challenge in the writ petition aforesaid pertains to land measuring 37 kanal 11 marlas, earlier owned by the gram panchyat and 66 kanal 6 marlas which is also subject matter of the suit filed by Rudhar Kumar etc.

This brings the court to the second question with regard to ownership of Shivala Shiv Ji Maharaj in respect of land measuring 66 kanal 6 marlas. Counsel has failed to point out if any such plea/contest was raised by the appellants either by way of pleadings or during the course of evidence or even at the time of making submissions either before the trial court or First Appellate Court. Counsel either ignorantly or mischievously tried to raise this issue for the first time in second appeal but without appreciating the contents of written statement filed at the behest of defendants-appellants. The appellants-defendants in para 2 of the written statement, on merits, have specifically admitted that land measuring 66 kanal 6 marlas of the suit property is owned by Shivala Shiv Ji Maharaj. A relevant extract therefrom reads as follows:-

“Not contested that Shivala Shiv Ji Maharaj is a Prachin religious Temple and it has great historical as well as religious importance. It is also not disputed that the temple is in existence from the times of Akbar The Great. It is admitted that the land measuring 66 kanal 6 marlas from the suit property is owned by Shivala Shiv Ji Maharaj Temple and it is matter of record regarding the release of the above mentioned land as Muafi during Mugal Regime. It was also matter of record

regarding fact that Muafi was conditional one being granted to Sh. Thakur Nath and the onus is upon the plaintiffs to prove the same strictly.”

It is surprising that despite clear admission by the defendants-appellants, a vain attempt was made, may be, because of disappointment of the appellants of having lost management of the disputed land, to contend that land measuring 66 kanal 6 marlas does not belong to Shivala Shiv Ji Maharaj or the said land only to the extent of 3/10 share belongs to said Shivala by relying upon jamabandi Ex. D10. Since the appellants-defendants did not contest claim of the respondents-plaintiffs that land measuring 66 kanal 6 marlas, detailed in head note of the plaint is owned by Shivala Shiv Ji Maharaj and was released as *muafi* during Mughal regime vide IS No. 5044 dated 30.9.1856, in view of allegations raised in para 2 of the plaint, there was no obligation of the respondents-plaintiffs to establish the said fact by adducing oral or documentary evidence.

As per settled position in law, there cannot be better evidence than admission made by the contesting party. There is nothing on record suggestive of the fact that appellants ever retracted the admission made in para 2 of the written statement much less by giving satisfactory and tangible explanation. In this view of the matter, the appellants cannot derive any advantage to their contention by referring to jamabandi Ex. D10. I would hasten to add that jamabandi is not a document of title. A presumption of correctness is attached to entries in jamabandi but the same is rebuttable one. Taking into consideration pleadings of the written statement in para 2, extracted hereinbefore, presumption attached to entry in jamabandi Ex. D10

stands sufficiently rebutted. In this view of the matter, the second question formulated hereinbefore, is answered against the appellants and in favour of the respondents-plaintiffs while affirming consistent findings recorded by the courts.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

29.10.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes