

103

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA 1736-2017 (O&M)

Date of Decision: 12.03.2020

Achal Mandir Sabha and others

... Appellants

Versus

Achleshwar Mandir Kar Sewa Trust and others

... Respondents

RSA 5746-2016 (O&M)

Joginder Puri and others

... Appellants

Versus

Achleshwar Mandir Kar Sewa Trust and others

... Respondents

CORAM : Hon'ble Mr. Justice RAJBIR SEHRAWAT

Present : Mr. Arun Abrol, Advocate
for the appellants in RSA-1736-2017.

None for the appellants in RSA 5746-2016.

Mr. Saurabh Garg, Advocate
for the caveators- respondents.

RAJBIR SEHRAWAT, J.(Oral)

This shall dispose of two appeals, bearing RSA No. 5746 of 2016 filed by defendants No.7 to 9 in original suit, as well as, RSA No. 1736 of 2017 filed by defendants No. 1 to 5 and 10 in the original suit.

For convenience parties herein are referred to as the plaintiffs

and the defendants, as they were described in the original suit.

The common facts giving rise to these appeals are that the respondent No.1, Achleswar Mandir Kar Sewa Trust, Batala had filed a suit for declaration to the effect that the plaintiff trust, which is a registered society under the Societies Registration Act, 1860; is exclusively entitled for doing development works of Achleswar Mandir and its premises and other properties of the Mandir, as well as, to operate the bank accounts. It is entitled to collect the amount of donations and materials from the devotees, as well as, to manage all other affairs of the Mandir, including the employment and removal of the Pujari's for performing the religious duties.

It was asserted in the suit filed by the plaintiffs that the plaintiff trust is a society bearing registration No. 837 under the Societies Registration Act, 1860. Under its memorandum of association and rules and regulations, Senior Chief Trustee is to deal with all the legal matters concerning the trust. The plaintiff trust is having account No. 639 in Vijaya Bank and another account No. 22334 in Canara Bank and the said accounts are being operated by the plaintiff-trust. Besides this, since 13th September, 2001, the plaintiff trust is carrying out the development work of the premises of the Mandir. The entire development work was done by the plaintiff trust only even before the date of registration, as unregistered body. It was further asserted that the said Achleswar Mandir was constructed thousands of years back and had gone in dilapidated condition. However, the restoration work was started by the plaintiff trust and thereafter, the idols of God Shiv-Parwati, Lord Radha Krishan, Mata Vaishno Devi and others Gods were installed. Lot of other development works had also been carried out, which has been mentioned in the plaint. Devotees from all over the country visit the temple and donations are received. All the accounts of donations are being maintained by installing about 300 safes where donations are collected and which are opened in the

presence of members of the trust. The plaintiff trust has also got a PAN number and donations are exempted from the Income Tax under Section 80 G of the Income Tax Act, 1961. The defendants have no right to interfere in the management of the Mandir, collection of donations or arranging the activities at the premises of the temple. Earlier one Parvesh Gupta and others had threatened to interfere in the affairs of the plaintiff trust, therefore, the civil suit was filed before the Civil Court, which was decreed in favour of the plaintiff on 23rd February, 2008. Similarly, in another suit, injunction was granted in favour of the plaintiff trust against other persons; including Iqbal Singh, vide order dated 29th May 2008. However, now the defendants have threatened to interfere in the management, control and administration and working of the plaintiff trust, qua the development work to be carried out by plaintiff No.1 at Achleswar Mandir and its properties. The plaintiffs requested the defendants to desist from such interference. However, they have refused.

Upon notice, the defendants contested the suit filed by the plaintiffs. The defendant No.10; which also claims to be registered society, along with defendants No.1 to 5, filed their written statement asserting therein that the plaintiff trust was created only for the purpose of carrying out the Karsewa of the construction work at the temple. The defendants have their own bank account duly maintained; and have been working for betterment of the Mandir since 1996. Plaintiffs are neither concerned anymore with the affairs and construction of the temple nor do they have any link with the temple. Rather, they have only helped the defendants in the work of the 'Karsewa'. The defendant No. 10 is also a registered society, bearing registration No. 756 under the Societies Registration Act. Since 1970 the development work is being carried out by defendant No.10. Various activities; including the

check up camps; are being organised at the Mandir by defendant No. 10. Now the plaintiffs intend to take control of properties and funds of Mandir with malafide intention. They don't have any right to administer the properties, funds or the activities of the Mandir. Beside this, in the separate written statement originally filed by defendants No. 7 to 9, it was pleaded that the answering defendants were performing the duties of the Pujari at the Mandir. However, later on these defendants had sought to amend the written statement to include an assertion that they are the owner of the properties on which the Mandir has been constructed. However, that application was declined by the Court.

Parties led their respective evidence to substantiate their respective assertions. After considering the evidence led on record, the trial Court decreed the suit in favour of the plaintiffs. Feeling aggrieved against the same, the defendant No. 10 along with defendants No.1 to 5 had filed one appeal; and the defendants No. 7 to 9 filed a separate appeal; before the Lower Appellate Court. However, both these appeals were dismissed by the Lower Appellate Court. Hence the present two appeals have been filed by the defendants. RSA No. 5746 of 2016 has been filed by defendants No. 7 to 9 and RSA No. 1736 of 2017 has been preferred by defendant No. 10 along with defendants No. 1 to 5.

So far as the appeal filed by defendants No. 7 to 9 is concerned, the order sheet of this Court shows that the case has already been adjourned 15 times, mostly on request of the learned counsel for the appellants. However, even today the counsel for the appellants has not come present to argue the case. But, the counsel for the appellants, in Appeal No. 1736 of 2017 is present to assist this Court and to address the arguments.

has submitted that the plaintiff No.1 is a trust, and has described itself as trust only. Therefore, the suit filed by the trust in its individual capacity, is not maintainable. The suit filed by the trust is to be governed by Section 92 of CPC. Under the said provision, the suit could have been filed only through the office of the Advocate General (Punjab). Since the suit has not been filed through the office of the Advocate General (Punjab) therefore, the suit itself is not maintainable. He has further submitted that the argument of plaintiff, that it is a Society registered under Society Registration Act, cannot be permitted; being against the pleadings. Once they have pleaded in the suit to be a Trust, then they cannot be permitted to lead the evidence that they are a Society registered under the Societies Registration Act, 1860. Hence, the Courts below have gone wrong in law in treating the plaintiff as a registered Society; and deciding the case accordingly. It is further submitted that; otherwise also, a Society; for the religious purposes, cannot be registered under the Societies Registration Act. Hence the plaintiff trust could not have acted as a religious society.

On the other hand, counsel for the respondents/plaintiffs has submitted that the plaintiffs, though described as a Trust, however, is a Society registered under the Societies Registration Act, 1860. Therefore Section 92 of CPC is not attracted in the present case. The certificate of registration; Exhibit P-57; makes the things clear that the plaintiff No.1 is a registered Society and not a Trust. Still further, it is submitted that the plaintiffs have rightly led evidence to substantiate it to be a registered Society while leading their evidence; because in the plaint itself; the plaintiffs have mentioned even the registration number of this Trust as a Society. To prove the said registration number, necessary evidence has been

Registration Act. Hence there is nothing wrong or inconsistent in the pleadings and the evidence led by plaintiff. Hence the suit has rightly been decreed by the courts below.

Having heard learned counsel for the parties and having perused the records, this Court does not find any substance in the arguments of the learned counsel for the appellants. Although, learned counsel for the appellants is right in submitting that the plaintiff No.1 has described itself as a religious Trust in the plaint, however, the facts remains that the registration number of the said trust is also mentioned in the plaint. The Registration Certificate of the plaintiff No.1, which has been duly proved on record, shows that the plaintiff No.1 is a Society registered under the Society Registration Act. Under the provisions of the Societies Registration Act, as well as, in the memorandum of association of the Society, the plaintiff being a legal person has every right to file suit in its separate and specific capacity. Hence the requirement of Section 92 of CPC is not attracted in the present case. The courts below have rightly come to the conclusion in this regard.

Although, the counsel for the appellants has submitted that having described itself as a trust, plaintiff No.1 could not have taken a turn around and to start asserting that it was a Society and not the Trust. However, even, this argument is bereft of any merit. No doubt in plaint the description of the plaintiff No.1 is mentioned as Trust, however, as mentioned above, even the registration number of the Trust is mentioned. That registration number is only under the Societies Registration Act. Since the plaintiff No.1 has specifically mentioned the registration number, on the basis of which it was claiming legal status as a legal person, therefore, it has rightly led the necessary evidence to prove that status as such. Needless to say that it is the legal status of the plaintiff and not its nomenclature which would determine

its entitlement to file the suit. Hence, this argument of the counsel for the appellants is also liable to be noted only to the rejected.

So far as the other merits of the controversy are concerned, it is necessary to mention here that the plaintiffs have examined as many as 42 witnesses; including the persons from the general public; to prove the fact that they are controlling the affairs of the Mandir. It is they; who are arranging for worship at the Mandir. It is they; who are conducting the activity like organising fair and festivals of the Temple. Undisputedly, it is the plaintiffs who have carried out the development of the premises. Hence it is amply proved on record that it is the plaintiffs who are governing and managing the affairs of the temple; including its properties. Besides this, the documents pertaining to the banking and finance have also been led in evidence to show that the plaintiffs are operating the accounts of the Mandir, which involves the deposits of the donations; as well as; withdrawals for the purposes of development work. The statement of accounts have duly been placed on record before the courts below. Hence, by no means, it could be said that plaintiffs were not managing the affairs of the Mandir.

On the other hand, the defendant No. 10 has not been able to prove its case qua the claim of managing the affairs of the temple. No evidence; at all; has been led on file to prove the fact that the defendant No. 10 ever worked for the welfare of the temple or even managed the affairs of this temple. On the contrary, DW2, who has been examined by defendant No.10, has admitted the case of the plaintiffs. He has admitted that all the construction work was done by the plaintiffs. It has further been admitted that the plaintiffs are managing the entire work of organising the celebration of the festivals. In cross-examination, he categorically admitted that the

existence of the defendant No. 10, as a legal entity; any more, has not been proved on record, in accordance with law. Although, defendant No. 3 had appeared as witness on behalf of the defendants and he was asked to produce the list of members of this society, which constituted the defendant No. 10, however, despite having been given repeated opportunities, he could not even place on record the list of members of the society, the defendant No. 10.

So far as the claim of the defendant No. 7 to 9 is concerned, no evidence has been led by them on the file to show that they ever performed the duties which they claim to be performing. Even oral evidence has not been led by these defendants to prove the fact that they ever worked as Pujaris in the temple. They only produced the jamabandi on records to show the existence of the temple on the land. However, this fact is not even disputed in the suit. Not only this, it has also come on record that one of the defendants; out of that defendants No. 7 to 9; was caught by the Mandir authority, when he was stealing money from the Mandir and he had even given a written apology to the concerned authority, which has also been placed on file as Exhibit P-55. Even this document has not been rebutted by these defendants. Moreover, it is not even disputed, rather it is proved on record; that it is plaintiff No.1 who is now running the affairs of the Mandir. It is for them to decide as to whom they want to keep as Pujari in the temple.

Learned counsel for defendant No. 10 has also submitted that for the religious purposes, the society could not have been registered at all as per the provisions of the Societies Registration Act and; therefore, the appellant could not perform religious duties as well, however, this Court finds that this issue has rightly been dealt with by the lower Courts. As per the provisions of the Societies Registration Act, Societies are permitted to be registered for charitable purposes. As has been held by the Supreme Court in the judgment

rendered in *Hindu Public and others versus Rajdhani Puja Samiti and others, 1999 Vol. 1 Apex Page 562 (Supreme Court)*, the charitable purpose used in Societies Registration Act includes the religious purpose as well. Therefore, although the wards 'religious purpose' may not have been mentioned in the provisions separately, however, the society for charitable and religious purposes could very well be registered under the Societies Registration Act. In any case, the defendants have not even, by any counter claim or the cross-objections, questioned the existence and legal validity of the plaintiffs, either as a Trust or as Society. Hence this argument, otherwise also, pales into insignificance.

No other argument was raised.

In view of the above, finding no merit in the appeals, the same are dismissed.

(RAJBIR SEHRAWAT)
JUDGE

12.03.2020

Parveen Sharma

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No