

126.

2024:PHHC:021278

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.2116 of 2023 (O&M)

Date of decision: 08.02.2024

Bahadurgarh Siksha Sabha, Maal Godown Road, Mandi, Bahadurgarh,
District Jhajjar, and another

... Petitioners

Versus

Narender Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Niteen Kumar Sinha, Advocate,
Mr. Sanjeev Garg, Advocate,
Ms. Rajni Narula, Advocate, for the petitioners.

Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate,
Mr. Nitin Sachdeva, Advocate, for respondents No.1 to 4.

Mr. Krishan Kumar Chahal, Additional Advocate General,
Haryana, for respondents No.5 to 7.

GURBIR SINGH, J.

1.
- Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 05.04.2023 (Annexure P-8) passed by learned Civil Judge (Junior Division), Bahadurgarh, vide which, the application filed by the petitioners-defendants No.1 and 2 under Order 7 Rule 11 read with Section 151 CPC, has been dismissed.
2.
- Brief facts of the case are that Narender Kumar, Rajesh Goyal and Devender Mittal, plaintiffs No.2 to 4, arrayed as respondents No.1 to 3 herein, filed a suit for declaration and for permanent injunction, being special trustees of Maharaja Aggarsain Trust (Regd.)

Maharaja Aggarsain Bhawan, Railway Road, Bahadurgarh, District Jhajjar i.e. plaintiff No.1, which has been arrayed as proforma respondent No.4 herein. The case of the plaintiffs is that the Vaish Community of Bahadurgarh wanted to establish a Dharamsala for the travellers/visitors and for arranging marriage parties for needy persons. The proprietors of Village Parnala, District Jhajjar, donated land measuring 14 kanals 6 marlas comprised in Khasra No.141(14-6). Said Vaish Community constructed about 9 rooms and a big Maharaja Aggarsain Hall. But lateron, due to construction of other lodges in Bahadurgarh, the said Dharamsala became useless because of less number of visitors. Defendant No.1-Bahadurgarh Siksha Sabha, petitioner No.1 herein, which was running the school i.e. Vaish Arya Girls High School, Maal Godown Road, Bahadurgarh and due to shortage of accommodation there, requested the general body of Vaish Community to give the constructed rooms in said Dharamsala for running schools with the name of Vaish High School, Bahadurgarh and Vaish Kanya Pathshala Bahadurgarh. Said request was accepted by plaintiff No.1.

2.1 Said Vaish Community constructed said Dharamsala in the year 1980-81. It was registered with the District Registrar vide registration No.117 of 1980-81. Lateron a dispute arose regarding donation of said land of Khasra No.141 between the Gram Panchayat, Parnala and plaintiff No.1, which was resolved amicably, vide which, plaintiff No.1 got constructed 12 shops for the Gram Panchayat, Parnala

on Parnala-Bahadurgarh Road after investing huge amount and the land in said khasra No.141 was transferred in favour of plaintiff No.1 and mutation dated 25.01.1996 was also sanctioned. From time to time, said Dharamshala was extended. In May, 2015, during election of the office-bearers of plaintiff No.1, due to some dispute, the election process was withheld by the District Registrar, Firms and Societies, District Jhajjar at Bahadurgarh and an Ad hoc Committee was appointed for the proper functioning of plaintiff No.1, but its members were not taking any interest in the proper functioning of plaintiff No.1. Due to decrease in strength of students in schools, the Government of Haryana stopped the aid provided by government to schools, which includes the schools of defendant No.1 i.e. Vaish High School, Bahadurgarh and Vaish Kanya Pathshala, Bahadurgarh w.e.f. 31.03.2018 and the teachers were given options to join government service in lieu of closing of the school.

2.2 In the school which was being managed by defendant No.1, there was strength of 584 students. Since in the session 2017-18, there were only 90 students in Vaish Kanya Pathshala, Bahadurgarh, the office bearers of plaintiff No.1 terminated the permission given to defendant No.1 to run the schools and asked to admit those 90 students in their school i.e. Vaish Arya Girls High School. Thereafter, the Head Masters of both the schools handed over the keys to the Chowkidar of plaintiff No.1.

2.3 In April, 2018, defendant No.1 tried to take forcible possession of said building of plaintiff No.1 under the pretext of running Vaish Kanya Pathshala. The members of Ad hoc Committee submitted a representation dated 11.04.2018 before the Sub Divisional Magistrate, Bahadurgarh, to restrain defendant No.1. Plaintiff No.1 showed its intention to start a new charitable school with the name of Maharaja Aggarsain Public School, Bahadurgarh. In that respect, the plaintiffs also met with Deputy Commissioner, Jhajjar and submitted a representation dated 03.05.2018. On the said representation of the plaintiffs, the Deputy Commissioner, Jhajjar, verbally directed the plaintiffs and defendants No.1 and 2 to get 90 odd students of Vaish Kanya Pathshala, Bahadurgarh accommodated in the newly ensuing Maharaja Aggarsain Public School, Bahadurgarh, to be started by the plaintiff No.1 in the suit property.

2.4 Since the recognition of Vaish Kanya Pathshala was granted by the Department of School Education, Haryana at the premises of the school being managed by defendant No.1, but defendant No.1 was bent upon to run said Vaish Kanya Pathshala at the suit property under the garb of order dated 29.05.2018 passed by Deputy Commissioner, Jhajjar i.e. defendant No.4. Defendant No.1, with the help of defendants No.3 and 4 i.e. Tehsildar and Deputy Commissioner, broke open the door of the suit property i.e. Maharaja Aggarsain Public School on 31.05.2018,

whereas said defendants No.3 and 4 have no power to unlock the premises of the building of plaintiff No.1.

2.5 During the pendency of suit, defendant No.1 filed an application dated 11.03.2019 under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint on the ground that plaintiff No.1 is a registered trust, namely, Maharaja Aggarsain Trust (Regd.) and its governing body was dissolved in the year 2015 and the ad hoc body has no right to file the suit and further the claim is time barred as defendant No.2 is in possession of the suit property for the last 50 years.

2.6 Said application was replied to by the plaintiffs denying the contentions raised by the defendant No.1.

2.7 Vide order dated 05.04.2023, said application filed under Order 7 Rule 11 read with Section 151 CPC was dismissed. It is the said order which has been challenged by way of present revision petition before this Court.

3. Learned counsel for the petitioners submits that the petitioners-defendants No.1 and 2 are not challenging the order with regard to the fact that question of limitation is a mixed question of law and fact. The respondents-plaintiffs have neither any right to file the suit nor they are members of governing body of plaintiff No.1. Plaintiff No.1, being a registered Trust, is governed by elected body, which was dissolved on 15.05.2015 and an ad hoc body came into existence which has no right or competence to take any action on behalf of the Trust.

Petitioner/defendant No.2 is in existence of suit property from the time of establishment of Trust.

4. On the other hand, learned senior counsel appearing on behalf of respondents No.1 to 4-plaintiffs submits that Ad hoc governing body of respondent No.4-Trust and respondents No.1 to 3 being its social trustees are very much competent to file the suit.

5. I have heard the submissions of learned counsel for the parties and have gone through the file.

6. The suit was filed by Maharaja Aggarsain Trust (Regd.), Maharaja Aggarsain Bhawan, Railway Road, Bahadurgarh, District Jhajjar, through its special trustees i.e. plaintiffs No.2 to 4, on the ground that they being members of Vaish Community, have contributed money/donations for plaintiff No.1-Trust, so, they have interest in the suit property. For the purpose of deciding the application under Order 7 Rule 11 read with Section 151 CPC, the averments made in the plaint are to be seen. Plaintiffs No.2 to 4 are claiming suit property to be Trust property and also claiming that plaintiff No.1 is a registered Society. The plaintiffs are seeking declaration that it being Trust property belongs to the Trust or vest in the Society. The learned court below disposed of the application that the question of maintainability is a mixed question of law and fact which is required to be decided in trial on the basis of evidence to be adduced by parties.

7. The question of limitation is a mixed question of law and fact. Finding to that effect is recorded properly. A specific objection is raised that ad hoc body has no right to take legal action on behalf of Trust. Plaintiff No.1 is shown as under:-

“Maharaja Aggarsain Trust (Regd.), Maharaja Aggarsain Bhawan, Railway Road, Bahadurgarh, Distt. Jhajjar, registered as a Society with the Deputy Registrar, Firms and Societies, Distt. Jhajjar at Bahadurgarh through plaintiffs No.2 to 4 being its special trustee/s.”

It is not clear if suit is filed by Trust or Society. Both are different legal entities. The trial Court is required to pass speaking order whether suit is maintainable or not and then to proceed further.

8. So, in the light of above discussions, the impugned order dated 05.04.2023 (Annexure P-8) is set aside. The learned trial Court is directed to pass speaking order whether the suit is maintainable or not and then to dispose of the application under Order 7 Rule 11 CPC afresh only on this ground.

9. Parties are directed to appear before the Court at Civil Judge (Junior Division), Bahadurgarh, on 21.02.2024.

10. Present revision petition stands disposed of accordingly.

(GURBIR SINGH)
JUDGE

February 08, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No