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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****LPA-1099-2024 (O&M)
Date of decision: 16.05.2024****Cambridge College Governing Council and another**

..... Appellants

versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Vaibhav Sehgal, Advocate,
Mr. Ateevraj Sandhu, Advocate and
Mr. Utkarsh Khatana, Advocate for the appellants.

Deepak Sibal, J.

1. Through a deed dated 08.11.1995, respondent No.5 donated his property at Amritsar to appellant No.1. One of the terms of the said deed was that appellant No.1 was required to use the donated property for the purpose of education. On 10.05.2012 respondent No.5 instituted a suit before the Civil Judge (Junior Division), Amritsar in which the appellants were arrayed as defendants. The main prayer made in the suit was to declare the donation deed dated 08.11.1995 as null and void on the ground that the purpose for which the deed had been executed was not being carried out by the appellants. Mandatory injunction to direct the appellants to restore possession of the donated property to respondent No.5 was also prayed for. Permanent injunction to restrain the appellants from alienating/ disposing of the property was also one of the prayers.

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2. On being put to notice, the appellants sought rejection of the plaint filed by respondent No.5 on the ground that he had not affixed the requisite court fee. Through order of the Civil Court dated 01.09.2014 the appellants' prayer was accepted and respondent No.5's plaint was rejected on account of deficiency in the affixation of requisite court fee.

3. In the year 2015, respondent No.5 instituted another suit (hereinafter referred to as the second suit) before the Civil Court at Amritsar. In this suit the appellants were arrayed as defendant Nos.1 and 3 with one Deepa Bedi impleaded as defendant No.2. The second suit was filed to declare the lease deed dated 01.09.2006, executed by defendant No.2-Geeta Bedi in favour of appellant No.2 – Sandeep Bedi, as null and void as according to respondent No.5 the said lease deed was in violation of the terms and spirit of the afore referred donation deed dated 08.11.1995. Through the second suit respondent No.5 further sought specific performance of the donation deed dated 08.11.1995. In the alternative he sought to declare the donation deed dated 08.11.1995 as null and void on the ground that appellant No.1 had failed to comply with the spirit and purpose behind the donation. Another alternative prayer made through the second suit was to handover the possession of the donated property to respondent No.5. Injunction to restrain the defendants in the second suit from transferring/ alienating the donated property was also sought. The prayer for the award of mesne profits had also been made.

4. On being put to notice of the second suit, the afore referred defendants therein appeared and filed an application under Order VII Rule 11 CPC seeking rejection of respondent No.5's plaint on the ground that in

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the second suit also respondent No.5 had not affixed the applicable court fee. Through order dated 12.04.2019 the Civil Judge (Junior Division) at Amritsar directed respondent No.5 to affix the applicable court fee. When the applicable court fee was not paid, through order dated 09.09.2019, the Civil Judge (Junior Division) at Amritsar adjourned the matter to 11.10.2019 with a further direction that if by the adjourned date, the applicable court fee is not paid by respondent No.5, his plaint shall stand rejected. Through filing of revision petition before this Court being CR-6530-2019- Sanjeev Chand Mehra versus Cambridge College Governing Council, Amritsar and others, respondent No.5 challenged the order of Civil Judge dated 09.09.2019. In the said revision petition this Court issued notice and stayed the proceedings pending before the Civil Court. The revision petition is still pending before this Court with the next date of hearing being 20.08.2024.

5. In the meanwhile, through an application dated 09.10.2019, respondent No.5 asked the Financial Commissioner, Revenue, Punjab (for short – the FC) to issue appropriate directions to appellant No.1 to implement the spirit and terms behind the donation deed dated 08.11.1995. The FC referred the matter to the Deputy Commissioner, Amritsar (for short- the DC), who in turn, through order dated 20.11.2019, directed the Sub Divisional Magistrate, Amritsar (for short – the SDM) to verify the contents of the application filed by respondent No.5 and then file a report. To comply with the directions given by the DC, the SDM required the parties to assist him in the enquiry. Appellant No.1 filed a reply but later challenged these proceedings through filing of a writ petition before this Court being CWP-4130-2020 - Cambridge College Governing Council and another versus State

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of Punjab and others. Through this writ petition the proceedings initiated by the FC were challenged primarily on the ground that the same matter was already pending before the Civil Court and therefore, it was improper on the part of the FC to order holding of a parallel enquiry. After hearing learned counsel appearing for the appellants this Court issued notice and in the meanwhile, proceedings initiated on the application made by respondent No.5 to the FC were stayed. During the pendency of the appellants' writ petition, respondent No.5 filed an application under Order XXVI Rule 9 CPC seeking therein appointment of a Local Commissioner so that the correct factual position could be brought on the record. The appellants filed a reply seeking dismissal of the said application. On 03.04.2024, after hearing preliminary submissions on behalf of the contesting parties, a learned Single Judge of this Court adjourned the matter to 24.05.2024 and in the meanwhile, directed the State counsel to get the property in question inspected and then file a status report. Interim stay granted in favour of the appellants was directed to continue. Through the present Intra-Court appeal the appellants have challenged the direction given by the learned Single Judge in his interlocutory order dated 03.04.2024 directing the State to get the property in question inspected and then file a status report.

6. Learned senior counsel appearing for the appellants submits that the issue taken up by respondent No.5 before the FC is the same as raised by him through his second suit; during pendency of respondent No.5's second suit he cannot be allowed to initiate parallel proceedings before the revenue authorities, especially when the proceedings of the second suit have been stayed by this Court in the revision petition filed by respondent No.5 to

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challenge therein the interim order of the Civil Court through which he has been directed to affix ad-valorem court fee or face dismissal of his suit; in pursuance to respondent No.5's application to the FC, the enquiry being conducted by the revenue authorities has been stayed by this Court; in the afore circumstances, the impugned direction given by learned Single Judge runs contrary to the interim directions issued by this Court; on one hand this Court has stayed the enquiry by the revenue authorities to determine the use to which the property in question is being put to while on the other hand through the impugned directions the learned Single Judge has ordered what has been stayed; the impugned direction greatly prejudices the rights of the appellants which are yet to be determined; the issue with regard to the appointment of a Local Commissioner was pending but without opining thereupon the learned Single Judge has issued the impugned direction and that implementation of the impugned direction would result in collection of evidence which would be used against the appellants by respondent No.5.

7. On being confronted with the issue of maintainability of the present intra-Court appeal filed against an interlocutory order learned senior counsel submitted that the impugned direction finally decides the issue regarding appointment of a Local Commissioner and that the same would materially and directly affect the final decision in the main case as also that it would result in seriously prejudicing the appellants' rights. Therefore, in terms of the law laid down by the Supreme Court in Midnapore Peoples' Coop. Bank Ltd. and others vs. Chunilal Nanda and others (2006) 5 Supreme Court Cases 399 as also in Life Insurance Corporation of India vs.



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Sanjeev Builders Private Limited and others, (2018) 11 Supreme Court Cases 722 the present appeal would be maintainable.

8. The afore submissions made on behalf of the appellants have been considered.

9. In Midnapore's case (*supra*) the Supreme Court has held as follows:-

“16. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories :

- (i) Orders which finally decide a question or issue in controversy in the main case.*
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.*
- (iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.*
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.*
- (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.*

The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, 'judgments' for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not 'judgments' for purpose of filing appeals provided under the Letters Patent.”

10. Thus, the Supreme Court in Midnapore's case (*supra*) has held that an intra-Court appeal under the letters patent would be maintainable

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against interim orders passed by a Single Judge of the High Court through which orders the Single Judge has finally decided the question or issue in controversy in the main case; has finally decided an issue which would materially and directly affect the final decision in the main case and those interim orders which finally decide a collateral issue or question which is not the subject matter of the main case. The Supreme Court further goes on to hold that no intra-Court appeal would lie against routine interim orders which have been passed by a learned Single Judge only to facilitate the progress of the case till its culmination in the final judgment as also against those interim orders which may only cause some inconvenience or prejudice to a party but which do not finally determine the rights and obligations of the parties to the lis.

11. In the light of the law laid down by the Supreme Court in Midnapore's case (*supra*) we shall now consider if the instant intra-Court appeal is maintainable.

12. Through their writ petition, which is pending before the learned Single Judge, the appellants have challenged the enquiry initiated by the FC on respondent No.5's application through which application respondent No.5 has sought issuance of directions by the FC to the appellants requiring them to comply with the purpose behind donation of respondent No.5's property to the appellants made through the donation deed dated 08.11.1995. According to respondent No.5 through the aforesaid deed dated 08.11.1995 respondent No.5 had donated his property to the appellants for education purposes whereas the appellants were running a coffee shop in the donated property.

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13. The primary ground taken by the appellants to challenge the proceedings initiated by the FC at respondent No.5's instance is that the issue raised by respondent No.5 through his application filed before the FC was already pending before the Civil Court at Amritsar and therefore, the FC should and could not have initiated proceedings which would run parallel to the proceedings already pending before the Civil Court.

14. In the course of proceedings pending before the learned Single Judge an application was filed by respondent No.5 under Order XXVI Rule 9 CPC seeking therein appointment of a Local Commissioner so that the correct factual position with regard to the usage of the donated property by the appellants could come to light. The appellants filed a reply opposing such prayer.

15. In the light of the afore factual background, through the impugned direction, the learned Single Judge has directed the State to inspect the site and then file a status report. The State has been asked by the learned Single Judge to do the job of a Court Commissioner. Thus, the issue with regard to appointing of a Court Commissioner has been finally decided. Apparently, the learned Single Judge seeks to shed light on the extreme positions on fact before him taken by the contesting parties. It cannot be ruled out that the status report to be filed by the State in pursuance to the impugned interim direction would have a material and/ or direct affect on the final decision in the main case. Therefore, in the light of the law laid down by the Supreme Court in Midnapore's case (*supra*) the instant intra-Court appeal is held to be maintainable.

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16. After having opined on the maintainability of the present intra-Court appeal the decks are now clear for us to consider the appeal on its merits.

17. As noticed earlier, the contesting parties before the learned Single Judge have taken conflicting stands with regard to usage of the property donated to the appellants by respondent No.5. It is the definite case set up by respondent No.5 that through donation deed dated 08.11.1995 he had donated his property to the appellants to enable them to use it for the purpose of education whereas they have deviated from such purpose as they are running a coffee shop in the donated property. On the other hand, the appellants have vehemently denied the factual assertions made by respondent No.5 by stating that the property in question is being used solely for the purpose of imparting education and in support of their claim have also placed on record certain photographs purportedly of the donated property.

18. With an attempt to decipher the truth and the factual position existing at the site the learned Single Judge, through the impugned direction, while adjourning the matter to 24.05.2024, has directed a non-partisan party i.e. the State to have an inspection conducted of the donated property and then file a status report. Apparently, this direction has been issued by the learned Single Judge to assist and guide him to arrive at a just decision with regard to the controversy raised and pending before him. In the afore facts, the learned Single Judge is found to be well within his rights to seek a report to aid him in the exercise of his extra ordinary writ jurisdiction.



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19. The impugned direction per se does not prejudice the appellants. The State is a third party which has been entrusted with the task by the learned Single Judge to file a report after ascertaining the usage to which the donated property is being put to. The State is yet to file its report. Therefore, we fail to comprehend as to why the appellants are pre-empting that the report, if any, to be filed by a non-partisan party to the dispute would prejudice the appellants. It may even support the appellants’ case. In any case, in the facts of the instant case, we find the impugned interim direction by the learned Single Judge, a step in the right direction towards the final decision of the lis pending before him.

20. In the light of the above discussion, no error legal or factual, is found in the impugned direction given by the learned Single Judge in his interlocutory order dated 03.04.2024.

21. Dismissed.

(Deepak Sibal)
Judge

16.05.2024
gk

(Deepak Manchanda)
Judge

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