

(2002) 10 AHC CK 0111
In the Allahabad High Court
Case No : Civil Revision No. 220 of 2001

Baba Bhoot Nath Dharmart Nyas and others	APPELLANT
Vs	
Tajander Singh and others	RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Citation : (2002) 10 AHC CK 0111

Hon'ble Judges : U.K.DHAON, J

Final Decision : Allowed

Judgement

1. The revisionists have preferred the instant revision against the order dated 792001 passed by the District Judge, Lucknow. The brief facts of the case are that the opposite parties moved an application before the District Judge, Lucknow for leave for the Court for instituting a suit under S. 92 of the Code of Civil Procedure. The opposite parties have alleged in the suit under S. 92 of the Code of Civil Procedure that the petitioner No. 1 is a Public Charitable Trust created for charitable purposes and the revisionists 2 to 4 (defendants 2 to 4) are acting against the true intend that the provisions made in the trust deed and has committed, is committing and also intending to commit breach of trust. The opposite party No. 1 is claiming himself to be a trustee of the trust and the opposite parties 2 to 4 are claiming themselves as the worshippers of the temple and well wishers of the Charitable Trust. The learned District Judge by the order dated 1812001 granted leave under S. 92(1), C.P.C. The revisionists on 792001 filed preliminary objection about the maintainability of the suit. The learned District Judge after hearing the parties, by the impugned order, rejected the objections filed by the revisionists and held that the prayer granted earlier does not call for any recall. Being aggrieved by the aforesaid order the revisionists have approached this Court.

2. Sri Umesh Chandra, Senior Advocate, assisted by Sri H. L. Srivastava appearing on behalf of the opposite parties submits that the grant of leave is an administrative order and as such the instant revision is not maintainable and the

ingredients of S. 115, C.P.C. are also not applicable to the facts of the present case. He has relied upon the decision of Honble the Supreme Court in R. M. Narayana Chettiar v. N. Lakshmanan Chettiar, reported in AIR 1991 SC 221 and the decisions of the High Court in Ambrish Kumar Singh v. Raja Abhushan Bran Bramhshah, reported in AIR 1989 All 194; P. V. Mathew v. K. V. Thomas, reported in AIR 1983 Ker 5; and Raju Pillai v. V. P. Paramasivan, reported in AIR 1995 Mad 253.

3. Sri K. B. Sinha assisted by Sri Deepak Seth, learned counsel for the revisionists submits that the leave or permission of the Court is an order and as such the revision is maintainable. He further submits that the preliminary objection was filed by the revisionists, which was rejected by the learned District Judge in an arbitrary and illegal manner, without even affording any opportunity to the revisionists to lead evidence. He further submits that Tajender Singh is not the trustees as his resignation was accepted on 20/7/1997 and the leave cannot be granted by the Court to a stranger unless he has interest in the Trust. He has relied upon the judgment of Honble the Supreme Court in R. M. Narayana Chettiar v. N. Lakshmanan Chettiar, reported in AIR 1991 SC 221 and Prabhu Dayal Tewari v. Lakhan Singh, reported in 2001 All LJ 367 : (AIR 2001 All 60).

4. Sri K. B. Sinha, Senior Advocate, has also invited my attention to the affidavit, which was filed along with the suit under S. 92(1), C.P.C. He submits that the affidavit is defective and as such the entire proceedings initiated by the learned District Judge are null and void. He has also informed this Court that under Baba Bhoot Nath Dharmarth Nyas Trust there is no temple.

5. In reply to the arguments of the revisionists, Sri Umesh Chandra, learned counsel for the opposite parties submits that there is no defect in the affidavit which was filed along with the suit and the petitioners shall have the right to contest the suit on merits. He further submits that there is no illegality in the order passed by the District Judge and the revision petition deserves to be rejected.

6. I have considered the arguments of the learned counsel for the parties and gone through the record.

7. The revisionists have preferred the instant revision under S. 115, C.P.C. Section 115 of the Civil Procedure Code, after the amendments in the years 1976 and 1978 reads as under :

"115. Revision. The High Court, in cases arising out of original suits or other proceedings of the value exceeding one lakh rupees or such higher amount not exceeding five lakh rupees as the High Court may from time to time fix, by notification published in the Official Gazette including such suits or other proceedings instituted before the date of commencement of the

Uttar Pradesh Civil Laws (Amendment) Act, 1991, or as the case may be, the date of commencement of such notification, and the District Court in any other

case, including a case arising out of an original suit or other proceedings instituted before such date may call for the record of any case, which has been decided by any Court subordinate to such High Court or District Court, as the case may be, and in which no appeal lies thereto, and if such subordinate Court appears

(a) to have exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit :

Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court, the High Court alone shall be competent to make an order under this section.

Provided further that the High Court or the District Court shall not under this section vary or reverse any order including an order deciding an issue made in the course of a suit or other proceeding, except where,

(i) the order, if so varied or reversed, would finally dispose of the suit or other proceeding, or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made :

Provided also that where a proceeding of the nature in which the District Court may call for the record and pass orders under this section was pending immediately before the relevant date of commencement referred to above, in the High Court, such Court shall proceed to dispose of the same.

Explanation : In this section, the expression "any case which has been decided" includes any order deciding an issue in the course of a suit or other proceedings."

8. A bare perusal of the explanation which was incorporated by the U.P. Act No. 13 of 1978 with effect from 181978 makes it clear that it includes any order deciding an issue, made in the course of a suit or other proceedings.

9. Section 92(1) of the Civil Procedure Code under which the impugned order has been passed is as under :

"92. Public charities. (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the AdvocateGeneral, or two or more persons having an interest in the trust and having obtained the leave of the Court may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or

in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part or the subjectmatter of the trust is situate to obtain to decree

- (a) removing any trustee;
- (b) appointing a new trustee;
- (bb) for delivery of possession of any trust property against a person, who has ceased to be trustee or has been removed,
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorising the whole or any part of the trust property to be let, sold mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require."

10. A bare perusal of the said section would show that a suit can be instituted in respect of a Public Trust by the AdvocateGeneral or two or more persons having an interest in the Trust after obtaining leave of the Court in the principal Civil Court of original jurisdiction. An analysis of these provisions will show that the provisions of S. 92, C.P.C. can be invoked only when the following conditions are satisfied :

- (a) It should be with regard to a Public Trust to obtain a decree for the purposes mentioned in the said provision.
- (b) Suit should be on behalf of the AdvocateGeneral or two or more persons having an interest in the Trust.
- (c) Leave of the Court has to be obtained for instituting the suit.

From the above, it is clear that before granting leave to institute the suit, proceedings for granting leave have to be held in Court. In these proceedings the Court has to be satisfied that the Trust is a Public Trust and the persons who want to institute the suit are interested in the Trust. It is only on the satisfaction of the aforesaid conditions that the permission to institute the suit can be granted by the Court for the relief mentioned in the said S. 92, C.P.C.

11. Now analysing the provisions of S. 115, C.P.C. in this background there can

be no doubt that the present revision under S. 115, C.P.C. is maintainable.

12. In the case of Prabhu Dayal Tewari v. Lakhan Singh (AIR 2001 All 60) (supra), this Court has held that against an order granting permission to file a suit under S. 92, C.P.C., the revision lies.

13. In R. M. Narayana Chettiar v. N. Lakshmanan Chettiar, reported in AIR 1992 SC 221, Honble the Supreme Court has held in paragraph 17 as under :

"A plain reading of S. 92 of the Code indicates that leave of the Court is a precondition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind, the objectives underlying S. 92 and the language thereof, it appears to us that, as a rule of caution, the Court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave under S. 92 to institute a suit. The defendants could bring to the notice of the Court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave under S. 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave under S. 92 can be granted as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the provisions of S. 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the Court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, although, as a rule of caution, Court should normally give notice to the defendants before granting leave under the said section to institute a suit, the Court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or nonmaintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law.

14. A constitution Bench of Honble the Supreme Court presided by Honble P. B. Gajendra Gadkar, C.J. in Chairman Madappa v. M.N. Mahanthadevaru, reported in AIR 1966 SC 878, has observed as under (Para 10) :

"The main purpose of S. 92(1) is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that section can only be filed either by the Advocate General or two or more persons having an interest in the trust with the consent in writing of the Advocate General. The object is that

before the Advocate General files a suit or gives his consent for filing a suit, he would satisfy himself that there is a prima faice case either of breach of trust or of the necessity for obtaining directions of the Court."

15. The objections were preferred by the revisionists on 792001 and on the same day the impugned order was passed without affording any opportunity to the petitioners to lead evidence. The revisionists have also stated before this Court that the resignation of Sri Tajender Singh was accepted

on 2071997 and he is no more the trustee of the trust. To prevent the public trust from being harassed or put to legal expenses by reckless or frivolous suits being brought against the trustees, it was desirable for the District Judge to afford an opportunity to the petitioners to lead oral and file documentary evidence. The District Judge on 1812001 has passed the order granting the leave on the basis of the averments made in the affidavit that Tajender Singh is the trustee of the trust. The impugned order is legally not sustainable.

16. The revisionpetition is allowed and the order dated 792001 is hereby set aside. The District Judge is directed to decide the preliminary objections preferred by the petitioners after affording opportunity to the petitioners to lead evidence in support of their case.

Revision allowed.