
(1977) 12 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 854 of 1976

Bara Hanuman Temple Durgain, Amritsar

APPELLANT

Vs

Gurbux Lal Malhotra and Others

RESPONDENT

Date of Decision : 16-12-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 92

Citation : AIR 1978 P&H 192 : (1978) 1 ILR (P&H) 286

Hon'ble Judges : Prem Chand Jain, J;Gurnam Singh, J

Bench : Division Bench

Judgement

Gurnam Singh, J.—After obtaining sanction of the Advocate--General Punjab, under S. 92, C. P. C. (hereinafter referred to as the Code), Bara Hanuman Temple Durgian (hereinafter referred to as the Temple) through Durga Dass and Tilak Raj sons of L. Paras Ram who was the founder of the trust, filed the suit for the appointment of Gurbux Lal Malhotra, Gauri Shankar Sharma and Madan Lal Khanna as trustees of the Temple, which is a religious and charitable trust, as all the three trustees appointed by Sh. Paras Ram had died. In that suit, one, Gur Parshad filed an application under O. 1, R. 10 of the Code, for being impleaded as a defendant, alleging that he along with Rattan Chand and Shori Lal had been managing the Temple for the last four years and nine months, that after the death of Rattan Chand, he and Shori Lal had been continuing to manage the Temple as trustee managers and that after the death of Shori Lal, which took place in Feb., 1974, he alone managed the Temple and was in possession of its properties. He further alleged that the suit filed is a collusive one and has been filed with a view to grab the administration of the temple and that in his absence the suit could not be decided effectively and completely. The trial Sub Judge accepted the application of Gur Parshad and ordered the plaintiff to implead him as one of the defendants in the plaint. Being aggrieved with the order of the learned Senior Sub Judge for impleading Gur Parshad, as one of the defendants, the plaintiff came up in revision to this Court which was heard by Hon''ble the Chief Justice. After hearing the parties, the Hon''ble the Chief Justice, feeling that

important legal issues are involved in the case, referred the matter to a larger Bench and that is how this Civil Revision No. 854 of 1976 has come up before us.

2. The order of the learned Senior Sub Judge impleading Gur Parshad as a defendant in the case has been challenged by the plaintiff on the following three main grounds :

(i) the Advocate--general having recorded a finding at the time of granting permission to sue under S. 92 of the Code to the effect that "Rattan Chand had no authority under the law to join Shri Gur Parshad and Shri Shori Lal as co--trustees", the Court has no jurisdiction to permit Gur Parshad being joined as a defendant to the suit;

(ii) Permitting the impleading of Gur Parshad as defendant in the suit amounts to going behind the sanction of the Advocate--General and so suit under S. 92 can be allowed to be maintained against any person against whom permission to sue has not been granted by the Advocate--General; and

(iii) Gur Parshad respondent has to locus standi to claim to be added as a defendant. He is not a necessary party to the suit, and, therefore, he cannot be permitted to be added as a defendant against the wishes of the plaintiff--petitioner who is dominus litus and has control of the suit.

3. Admittedly Gur parshad was not a trustee appointed by L. Paras Ram, the founder of the trust. The contention of Gur Parshad, is that he had been managing the properties of the Temple along with L. Rattan Chand, that even after the death of L. Rattan Chand, he continued to do so since Feb., 1974 and is in possession of the properties of the Temple, that he had been defending some legal proceedings in which the plaintiff was a party and, therefore, he is very much concerned and interested in the present suit and that the suit cannot be effectively and completely decided without his presence.

4. At the time when the learned Advocate--General, Punjab, decided the application of Sarvashri Durga Dass and Tilak Raj sons of L. Paras Ram, under S. 92, C. P. C., L. Rattan Chand, one of the trustees appointed by Lala Paras Ram was alive. Lala Ratan Chand had put in an application in reply, in which he had stated that Shri Gur Parshad was taken as a co--manager in place of Shri Bansi Dhar and Sh. Shori Lal and Sh. Gur Parshad were managing the affairs of the Temple. It was in this background, that the learned Advocate--General, while granting permission, to sarvshri Durga Dass and Tilak Raj, for filing the suit under S. 92 of the Code observed that "Shri Rattan Chand had no authority under the law to join Shri Gur Parshad and Shri Shori Lal as co--trustees without a direction from a competent Court to that effect". This observation of the learned Advocate--General does not amount to a finding that Gur Parshad was not a necessary party in this case. Order 1, R. 10 of the Code empowers the Court to direct that other persons be made parties so that complete justice may be done and the rights of all are finally determined.

5. Now it is to be seen as to whether in a suit filed under S. 92 of the Code, any other person can be added as a defendant without the previous sanction of the Advocate-General. This point was considered by Bhandari, C.J., in *Kidar Nath Datt and Others Vs. Kishan Das Bairagi and Others*, , and it was observed that where such addition alters the nature of the suit, a fresh sanction of the Advocate-General is necessary. This matter also came up for consideration before a Division Bench of Rajasthan High Court in *Ghanshyamlalji Vs. Collector, Udaipur and Others*, , wherein it was observed that:

"One of the objects of R.10 of O. 1 is to enable the court to try and determine once for all material questions, common to the parties and to third parties and not merely questions between the parties to the suit

6. In the case of *Ghanshyamlalji* AIR 1958 Raj 161 (supra), the suit was filed under S. 92 of the Code and in that suit *Goswami Ghanshyamlalji* filed an application before the District Judge, in whose Court the suit was pending, under O. R. 10 of the Code, praying that he may be impleaded as a party. His application was rejected by the District Judge on the ground that it was open to him to bring a separate suit to vindicate his private rights. The Division Bench of the Rajasthan High Court, after discussing the law on the point, came to the conclusion that the learned District Judge should have allowed the application of the applicant for being joined as a party under O. 1, R. 10 of the code and accordingly the revision filed by *Ghanshyamlalji* was allowed.

7. The case of AIR 1937 229 (Oudh) , was also referred to in the case of *Ghanshyamlalji Vs. Collector, Udaipur and Others*, . In the case of *Suresh Singh* (supra), it was held that:-

" * * * * "

Such person should be added as defendant in suit in order to enable Court to properly and completely adjudicate upon questions involved in suit."

8. In *Vikrama Das Mahant Vs. Daulat Ram Asthana and Others*, , the Hon"ble Judges observed that (at p. 390 of AIR):

"Therefore, a person who has been in de facto possession and management of the Asthan and its properties for a long time claiming to be its trustee under the decree of a Court, valid or invalid, has sufficient interest to maintain proceedings for the warding "off of a cloud cast by the defendant"s action against the interests of the Asthan."

9. In *Gobinda Chandra Ghosh alias G. Ghosh and Another Vs. Abdul Majid Ostagar and Others*, , it has been observed that:

"Once a suit is validly commenced after obtaining sanction as is necessary under S. 92 no fresh sanction is necessary at a further stage of the suit if the amendment of the plaint or the addition of the party does not alter the nature of the claim in the suit, but when such amendment or addition of party does change

the nature or scope of the suit, a fresh sanction is required."

10. In *Vaithilingam v. S. M. R. M. Ramalingam Pillai*, AIR 1918 Mad 1071, it has been observed that:

"It is open to a Court to add a party was defendant in a suit under S. 92, Civil P. C., just as in any other suit. Its right to do so is regulated by O. 1, R. 10."

11. The learned counsel for the petitioner contended that no party can be added in a suit against the wishes of the plaintiff. He further pointed out that no person can join as defendant without the previous permission of the Advocate--General. He relied upon *Johnson D Po Min v. U Ogh* AIR 1932 Rang 132, wherein it has been held that:

"Plaintiffs are not entitled to claim against strangers to trust either declaration of title or possession or any other relief--Strangers are not necessary parties to such suit and if plaintiffs have wrongly leaded them they cannot pray in aid provisions of civil P. C. (1908), O. 1, R. 3 or R.10."

12. He also relied upon *Abdur Rahim v. Abu Mohomed Barkat Ali Shah*, AIR 1928 PC 16, wherein it was observed that:

" A suit in respect of trust property was instituted by seven persons with the sanction of Advocate General. It was subsequently emended without his sanction by adding strangers to the trust as defendants and by adding prayers for relief not covered by S. 92. The suit was later on compromised by six out of the seven plaintiffs.

Held, that the nature of the suit was changed, that it ceased to be one of representative character and the decree based on the compromise, however blinding as against the consenting parties, cannot bind the rest of the public. Section 11", Expl. 6, haws no application to such a case."

13. As a rule, the Court should not add any person as a defendant in a suit against the wishes of the plaintiff but the word "may" in sub--r. (2) of R. 10 of O. 1 of the Code, gives a discretion to the Court and where it finds that the addition of a new defendant is absolutely necessary to adjudicate effectively and completely the matter in controversy between the parties, it will add a person as defendant even without the consent of the plaintiff. The contention of the learned counsel for the plaintiff, therefore, that Gur Parshad could not be joined as defendant is not acceptable.

14. The power given to the Court under O. 1, R. 10 of the Code is complete in all respects and it can join any person as plaintiff or defendant, who ought to have been joined or whose presence before the Court is necessary in order to enable it effectively and completely to adjudicate upon and settle all questions involved in the suit.

15. After considering the authorised on the point, we have reached the conclusion that where an addition of a party does alter the nature of the suit

under S. 92 of the Code, a fresh sanction of the Advocate--General is necessary. In the instant case the observation of the learned Advocate--General, while granting the sanction, that L. Rattan Chand had no authority under the law to join Gur Prashad as a co--trustee will not amount to a finding that Gur Parshad was not a necessary party to the suit and if Gur Parshad is added as a defendant in the suit that will not amount to going behind the sanction of the Advocate--general.

16. Now it is to be seen as to whether Gur Parshad has any locus standi to claim to be added as a defendant and as such is a necessary party. It is not disputed that Gur Parshad has been looking after the property of the Temple even along with L. Rattan Chand, who was one of the trustees. The contention of Gur parshad is that he has been managing the Temple as a trustee--cum--manager and that in the legal proceedings in the past he has been representing and looking after the interests of the Temple. Further according to him, he is a person very much concerned and interested in the suit and without his presence as a party, the suit cannot be effectively and completely decided. The suit filed by the plaintiff is for the appointment of new trustees as all the three trustees appointed by L. Paras Ram, the founder of the Trust, have died. In the plaint, in para No. 13, it has been mentioned that Sh. Rattan Chand, one of the trustees, in his reply to the application under S. 92 of the Code before the Advocate--general had stated that he had joined with him Sarvashri Gur Parshad and Shori Lal as co--trustees. Thus it is evident that Gur Parshad has been looking after the property of the plaintiff Temple. His allegation is that the suit has been field by the plaintiff, in collusion with the impleaded defendants, to secure orders of the Court regarding its (Temple's) administration at his back in order to exclude him (Gur Parshand) from its management. Since the suit is for the appointment of trustees and Gur parshad, who has been looking after the affairs of the Temple, wants to defend the claim of the plaintiff, he (Gur Parshad) would be in a better position to explain to the Court as to whether the appointment of the defendants already impleaded, would be in the interest of the plaintiff or not. Moreover, if he is added as a defendant, the cause of action and the nature of the suit will not be altered so as to enlarge the scope of litigation. The order of the learned Senior Sub--Judge impleading Gur Parshad as defendant is, therefore, upheld and this revision petition is dismissed.

Prem Chand Jain, J.

17. I agree.

18. Revision petition dismissed.