
(2014) 08 AHC CK 0064
In the Allahabad High Court
Case No : Civil Revision No. 30 of 2000

Bhagwan Laxminarain Virajman, Laxmi Narain Mandir	APPELLANT
Vs	
Surendra Kumar Dikshit and Others	RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

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

Citation : (2015) 109 ALR 523 : (2015) 127 RD 480

Hon'ble Judges : D.K. Upadhyay, J.

Bench : Single Bench

Advocate : Avadhesh Kumar, D.C. Mukherjee and D.P. Gupta, for the Appellant;
S.K. Rastogi, Anil Kumar Tewari and R.P. Yadav., for the Respondent

Judgement

Devendra Kumar Upadhyaya, J.?Heard Shri D.C. Mukherjee, learned Counsel for the revisionists.

Despite the matter being taken up in the revised list, none responds on behalf of the opposite parties.

Shri D.C. Mukherjee, learned Counsel for the revisionists has submitted that the order under revision in this case dated 3.12.1999 passed by IVth Additional District Judge, Kheri is completely unlawful as the same has been passed in clear breach of provision of section 92 of the Code of Civil Procedure inasmuch as the learned Court below has permitted to transpose certain individuals as plaintiffs though the said individuals had neither sought nor were granted leave of the Court to institute the suit.

2. The submission on behalf of revisionist-applicants thus is that the learned Court below has exceeded its jurisdiction while allowing the application under Order I, Rule 10, C.P.C. and ordering in transposition of the defendants No. 1 and 3 to 8 as plaintiffs.

3. I have given my anxious consideration to the submission made by the learned Counsel for the revisionists and have also perused the records.

4. The opposite party Nos. 1 and 2, namely, Surendra Kumar Dikshit and Suresh Chandra Misra had instituted a suit under section 92 of the Code of Civil Procedure after obtaining leave of the District Judge on 19.12.1990 in respect of the management of the properties of Laxmi Narain Mandir situated in Mathura Prasad Seth Colony, Mohalla Hathipur, District- Lahimpur Kheri. In the said suit the defendants No. 1 and 3 to 8 moved an application stating therein that they have the same cause of action as the plaintiffs against the defendant No. 2 and hence they may be permitted to be transposed as plaintiffs.

5. The defendant No. 2-R.K. Seth (Revisionist- applicant No. 2 herein) filed objection opposing the said application seeking transposition as plaintiffs. The learned Court below has allowed the said application and passed an order for incorporating the necessary consequential amendments transposing defendants No. 1 and 3 to 8 as plaintiffs.

6. It is this order which is the subject-matter of the present revision petition.

7. Learned Court below has allowed the application relying upon a judgment rendered by the Nishabar Singh Vs. Local Gurdwara Committee Manji Sahib, Karnal and Another, and has given the reason that since title defendants No. 1 and 3 to 8 also seek to prosecute the same cause of action as the plaintiffs as such they may be permitted to be transposed as plaintiffs.

8. What escaped the attention of the learned Court below is the provision of section 92 of the Code of Civil Procedure which provides that a suit or proceedings under section 92 of the Code of Civil Procedure can be filed or initiated either by the Advocate General or by two or more persons having interest in the trust after obtaining leave of the Court.

9. Section 92(1) of the Code of Civil Procedure is quoted herein below:

"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 Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court] may institute a suit, whether contentions 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 of the subject-matter of the trust is situate to obtain a decree--

(a) removing any trustee;

(b) appointing a new trustee;

(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) authorizing 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. From a perusal of the aforequoted provision of section 92 of the Code of Civil Procedure, it is abundantly clear that leave or permission of the Court is not required for institution of suit by the Advocate-General. However, in case two or more persons intend to institute such proceedings who have ample interest in the trust, then they can institute the suit only once they are granted leave or permission of the Court. The reliance placed by learned Court below on the Judgment of the Punjab and Haryana High Court, reported in Nishabar Singh Vs. Local Gurdwara Committee Manji Sahib, Karnal and Another, is absolutely misplaced. The case decided by Punjab and Haryana High Court did not relate to a suit instituted under section 92 of the Code of Civil Procedure. Hence the said judgment does not have any application in the instant case.

11. Learned Counsel for the revisionist has relied upon the judgment of Hon''ble Apex Court in case of Narain Lal and another v. Seth Sunderlal Tliolia Jorhi and others, AIR 1967 SC 1450 wherein Hon''ble Apex Court ruled that in case the sanction for institution of a suit under section 92 of the Code of Civil Procedure by the learned Advocate-General was granted to four persons and one of the said four persons dies then the suit cannot be permitted to be instituted by rest of the three surviving persons to whom the sanction was accorded by the learned Advocate-General.

12. It is noticeable that the said case decided by the Supreme Court pertains to a period when there existed a provision under section 92 of the Code of Civil Procedure which provided that the consent in writing of the learned Advocate-General will be needed to institute a suit under section 92 of the Code of Civil Procedure. Thus, the Hon''ble Supreme Court has clearly ruled that on the basis of sanction accorded by the Advocate-General to four persons, the suit cannot be instituted only by three surviving persons in case the one of them had died. In such a situation, a fresh sanction must be obtained as has been laid down by the Hon''ble Supreme Court in the case of Narain Lal and another (supra).

13. As in absence of leave of the Court, no person can be permitted to institute any suit under section 92 of the Code of Civil Procedure. Admittedly, in the instant case, the leave or permission to institute the suit under section 92 of the Code of Civil Procedure was accorded by the District Judge on 19.12.1990 only to two persons, namely, Surendra Kumar Dikshit and Suresh Chandra Misra. The said sanction was never either applied for by or accorded to the defendants No. 1

and 3 to 8. In absence of any such leave or permission of the Court, the learned Court below could not have passed the order allowing transposition of the defendants No. 1 and 3 to 8 as plaintiffs. What is relevant is that two or more persons may institute the suit only if they have obtained the leave of the Court. The phrase occurring in section 92 is:

"Having obtained the leave of the Court"

The said phrase would clearly indicate that for institution of the suit under section 92 of the Code of Civil Procedure, leave or permission of the Court should be obtained prior to institution of the same.

14. In view of above discussion made and reasons given above, the petition deserves to be allowed.

15. Accordingly, the Revision Petition is allowed and the order dated 3.12.1999 passed by the IVth Additional District Judge is hereby set-aside.

16. However, there will be no order as to costs. Considering the fact that the suit before Court below is pending since the year, 1990, it is directed that the learned Trial Court shall make all endeavour to expedite the proceedings of the suit and conclude the same at the earliest possible.

Let the record of the case alongwith a copy of this order be remitted to the learned Court below by the Office.