

(1966) 02 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal No. 1406 of 1964

D.A.V. College, Hoshiarpur Society

APPELLANT

Vs

Sarvada Nand Anglo Sanskrit Higher Secondary School,
Managing Committee

RESPONDENT

Date of Decision : 23-02-1966

Acts Referred:

Specific Relief Act, 1877 — Section 42
Specific Relief Act, 1963 — Section 34

Citation : AIR 1967 P&H 501

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : Bhagirath Dass and R. Sachar, for the Appellant; K.N. Tewari and A.L. Bahri, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—The D. A. V. College Hoshiarpur Society, plaintiff (hereinafter referred to as the Society) brought the present suit for a declaration that the Society was the owner and in possession of the management of the Sarvada Nand Anglo Sanskrit Higher Secondary School, Bassi Kalan, Tehsil and District Hoshiarpur and the Sarvada Nand Anglo Sanskrit Higher Secondary School Managing Committee, defendant (hereinafter referred to as the committee), had nothing to do with the School or the management thereof and by way of consequential relief prayed for an injunction restraining the defendant from interfering with the plaintiff's possession of management of the School.

The Society alleged that it founded the D. A. V. Middle School, Bassi Kalan in 1915 which later on was named as the Sarvada Nand Anglo Sanskrit Middle School at village Bassi Kalan, district Hoshiarpur and in due course was raised to the standard of a Higher Secondary School. It was further alleged that the Society acquired the land over which the buildings were constructed by it out of its own funds and thus the School building and the site under it belonged to it.

The plaintiff went on to state that on 4th July 1963 an unruly mob assaulted the Principal of the School and belaboured Balbir Singh, the President of the Society also when he went to the rescue of the Principal.

On 9th July 1963 the plaintiff received a letter from Jagan Nath to the effect that by resolution, dated 20th of June 1963 a few local residents had founded a society as Sarvada Nand Anglo Sanskrit Higher Secondary School Managing Committee, Bassi Kalan, the defendant and got it registered under the Registration of Societies Act which had decided to take management of the School in its own hands. The plaintiff urged that the said Committee had no connection with the School and as such was not entitled to take possession of the management thereof and had unlawfully deprived it from the ownership of the School building and other property.

2. The defendant resisted the above claim and in doing so pleaded that Balbir Singh, President of the D. A. V. College Society had not been authorised by the Society to institute the suit or to incur any expenditure in this connection and that it was in possession and in charge of the management of the School and as such the suit for mere declaration and injunction was not competent which should have been for possession of the management and the buildings on payment of proper Court-fee. The defendant further averred that site of the school building was acquired by it and the School building as well was constructed out of its funds and that the plaintiff-society was incorrect in stating that the said land was acquired by it and the building also was constructed at its cost. It was also averred that the services of Om Parkash Bagga, Principal were rightly terminated by the Committee. It was further averred that the defendant-committee was the only organisation legally entitled to the property and management of the School and that being so there was no question of its interference with the alleged management of the School by the plaintiff-society.

The trial Judge framed the following issues:--

1. Whether the plaint has been properly valued for the purposes of Court-fee and jurisdiction ?
2. Whether Shri Balbir Singh has been duly authorised and as such, has locus stand! to bring the suit ?
3. Whether the plaintiff's suit for declaration and injunction, as consequential relief is maintainable in the present form in view of the objections in the written statement P
4. Whether the plaintiff, as such, can file the suit?
5. What is the effect of the proceedings u/s 145, Criminal Procedure Code between me parties P
6. Whether the plaintiff is the owner of the School building and site under it ?
- 6-A. Whether the plaintiff is the owner and is in possession of the management

of the Sarvada Nand Anglo Sanskrit Higher Secondary school, Bassi Kalan ?

7. Relief.

He found issues No. 1, 8, 8 and 6-A in favour of the plaintiff and issues Nos. 2 and 4 against the plaintiff. As regards issue No. 5 it was observed that proceedings u/s 145 of the Code of Criminal Procedure between the parties had no effect on the present suit. In the result, the plaintiff was granted the decree prayed for with costs. The defendant felt aggrieved from the above and filed an appeal In the Court of die District Judge, Hoshiarpur. which came up for hearing before the learned Additional District Judge, who held that the plaintiff-society had been dispossessed of the management of the School by the defendant-committee and in the circumstances the mere injunction would not be sufficient to put the Society into the possession of the management and further that the School could not be separated from its management and that being so the plaintiff-society in view of the provisions made in Section 42 of the Specific Relief Act should have sued for possession. In his opinion the suit, as framed was not maintainable. The appeal was consequently accepted and the plaintiff's suit was dismissed and the parties were left to bear their own costs. The plaintiff-society has come up in second appeal against the judgment and decree of the learned Additional District Judge to this Court.

3. The learned counsel for the appellants contended that in the circumstances the suit as framed was competent. In order to determine his plea the findings of the trial Judge and the first appellate Court on issues Nos. 3, 6 and 6-A are very important. The trial Judge while dealing with issue No. 3 observed that the evidence no doubt showed that with effect from 4th July 1963 the plaintiff was not in control of the management of the School though it could not also be said that the defendant was in actual possession of the buildings and other property of the School and further that evidence on the record was enough to show that actual control of the management of the School was in the hands of the defendant-committee. In his view the suit for declaration and injunction, as framed was maintainable. As regards issues Nos. 5 and 6-A, the trial Court held that the right to control the management of the School in question vested in the plaintiff.

The learned Additional District Judge while dealing with this aspect of the matter at p. 18 of his judgment observed:--

"From the evidence discussed above it is proved that on 4th July 1963, Shri Om Parkash Bagga who was the Principal of the School in dispute along with other teachers had been turned out by the defendant-committee and even the President was also dragged out and the defendant-committee was managing the School since then. Their's is a registered society and they are getting the grant from the Government. May be that the defendant-committee is self-constituted but it is evident that it is managing the School since 4th July 1963 independently of the Managing Committee, Hoshiarpur. Even if the Managing Committee,

Hoshiarpur, had a right to manage the School, their right was interfered with by the defendant-committee and they were in possession of the management before the filing of the present suit."

The above is a finding of fact which is based on cogent evidence and so cannot be interfered with at this stage. The plaintiff and the defendant both claim ownership of the School building. The learned Additional District Judge in para. No. 17 of his judgment referred to the statement of Om Parkash Bagga, P. W. 16, erstwhile Principal of the School where he stated that on 4th July 1963, Jagan Nath defendant along with other persons turned him out of the School along with the other teachers, that they took the records of the School into possession and locked the office and that the School was not being managed by the Society since 4th July 1963. He further noticed the statement of Balbir Singh, President of the Society where he admitted that the pay bills of the teachers who were working in the School in dispute after 4th July 1963 had neither been passed nor paid by the Society.

The admissions made by Balbir Singh and Om Prakash Bagga. P. Ws. unmistakably point out that although the Society claimed ownership of the School buildings, it was not in possession thereof when the suit was instituted. Thus the plaintiff-society on the date the suit was lodged was neither in possession of the School buildings nor in control of the management thereof. In the circumstances the suit a" conceived by the plaintiff-society was not maintainable.

4. The learned counsel for the appellant, however, urged to the contrary and relied on Kunj Behari Prasadji v. Keshavlal Hiralal ILR (1904) 28 Bom 567, where it was laid down--

"Section 42 of the Specific Relief Act enacts that no Court shall make a declaration in a suit in which the plaintiff being able to seek further relief omits to do so. The section does not empower the Court to dismiss such a suit.

An injunction is a "further relief" within the meaning of Section 42 of the Specific Relief Act.

The facts of the cited case are distinguishable from the facts of the instant case. There the plaintiff maintained that the temple's inams and other property said to be involved in the suit were the endowed property of the deity to whom they had been dedicated, and that to that deity the endowed property belonged though the affairs of the endowment had to be administered by human agency, and this he claimed vested in him as Acharya. His was not a case for possession of the land but for determination as to who was to occupy the gaddi and thus as gaddinashin become the human agent of the deity. In the instant case the plaintiff-society pleaded in the plaint that the School building belonged to it and that it had also a right to control management of the School which is different from the right which the plaintiff claimed in the cited case. Hence the rule laid down in the said case is not applicable to the present case.

The learned counsel for the appellant also relied on C. Mohammed Yunus Vs. Syed Unissa and Others, . where it was held:--

"Whether the further relief claimed in a particular case as consequential upon a declaration is adequate must always depend upon the facts and circumstances of each case. A suit for declaration with a consequential relief for injunction is not a suit for declaration simpliciter--it is a suit for declaration with further relief."

In the case before the Supreme Court the plaintiffs claiming as heirs of one F sued to obtain a declaration of their rights in a certain institution which was in the management of trustees with an injunction restraining the defendants from interfering with their rights. The trustees never denied their right. There also the plaintiffs were not entitled to possession of the property which indeed vested in the trustees. They claimed certain rights in a certain institution, the management of which also vested in the trustees. The instant case is distinguishable from the above case for the reasons stated while dealing with the Kunj Bihari's case (1904) 28 ITR 587. The learned counsel for, the appellant also referred to another case reported as Ali Shah v. Fateh Mohammad AIR 1935 Lah 657, in support of his plea but this also has no bearing on the facts of the present case.

5. The learned counsel for the respondent on the other hand relied on Kandaswami Thambiran v. Vagheesam Pillai AIR 1941 Mad 822 , where it was observed--

"The plaintiff who is asking for a declaration of his title to the office of a mahant and who is not in possession of its properties must by reason of Section 42 ask for possession. His failure to do so vitiates his suit."

He also referred to the case of M. Masjid Shahid Ganj v. Shromani Gurdwara Parbandhak Committee, Amritsar AIR 1938 Lah 369 , which laid down---

"Where a suit is filed on behalf of the Mahommedan community which could have sued for possession of a mosque in possession of non-Muslims even though the individuals of that community cannot sue for such relief, but the relief asked for is only for a mere declaration and injunction, the suit is not maintainable."

The third case relied upon by him, AIR 1938 73 (Privy Council) , laid down as follows:--

"Where the plaintiff claims to be a trustee and administrator of certain institution of which neither he nor defendant is in possession or control of the management, a suit for mere declaration u/s 42 is maintainable; and where it is not open to the plaintiff to pray for possession also as against the defendant, injunction against the defendant is further relief within the meaning of the proviso to Section 42."

In the present case, as already observed, the plaintiff-society is not in possession of the School building or in control of the management of the School and on the other hand the defendant-committee is in control of the management of the

School and is also in possession of the School building. The suit, as conceived by the plaintiff-society, according to the rule laid down by the Privy Council is not maintainable because it could legitimately pray for possession also as against the defendant-committee. The other two cases relied upon by the learned counsel for the respondent also support this view. Therefore, the learned Additional District Judge was correct in holding as he did that the suit in the present form was not maintainable for the reasons that the plaintiff-society had not asked for possession of the management of the School. I would add that the plaintiff-society should have also prayed for possession of the School building because it claimed ownership thereof and the possession of the same was not with it but with the defendant.

6. The learned counsel for the appellant finally urged that the learned Additional District Judge should not have dismissed the suit after coming to the conclusion that it was not maintainable in the present form but should have remanded the same to the trial Court with a direction that the plaintiff should be given an opportunity to amend the plaint so as to bring it in the proper form. In this connection he relied on the cases of *Mst. Rukhmabai v. Laxminarayan* AIR 1960 SC 835 and *S. Bhagat Singh Vs. Satnam Transport Co. Ltd. and Others*, , which no doubt support his view point. The learned counsel For the respondent and nothing to urge against this part of his prayer. I also feel that the [earned Additional District Judge instead of dismissing the plaintiffs suit straight-away should have remanded it to the trial Judge with the necessary directions.

7. For the reasons given above, the appeal is allowed and the judgment and decree of the trial Judge and also the first appellate Court are set aside. The suit is remanded to the learned trial Judge with a direction that he should allow the plaintiff-society to amend the plaint in order to remedy the defects pointed out in the earlier part of this order and after it had been done and proper court-fee paid he should proceed to dispose it of according to law. The costs will abide the event.

8. The parties through their counsel have been directed to appear in the trial Court on 41-8-1966.