

(2008) 09 P&H CK 0072
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3191 of 1985

Idols of Lord Krishna and others

APPELLANT

Vs

Bawa Harbhajan Dass

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Citation : (2009) 5 RCR(Civil) 792

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. Arun Pali, Sr. Advocate, with Mr. Jai Bhagwan, Advocate. Ms. Tanisha Peshawaria, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J. (Oral)

1. This revision petition is directed against the order passed by the learned Additional District Judge, Sangrur, dismissing the appeal filed by the petitioner against the order passed by the learned Sub Judge, First Class, Malerkotla, as having been rendered infructuous.
2. The petitioner moved an application under Section 92 of the Code of Civil Procedure to institute a suit against Harbhajan Dass Chela Bawa Rukmani Dass for his removal from the management and appointing any other suitable person as Manager and for delivery of possession of the property of the Dera to such person as the Court may deem fit.
3. The prayer was also made for setting aside the alienation mentioned in application, which was made by Harbhajan Dass respondent. A declaration was also sought that applicant No. 1 is the owner of the land measuring 86 kanal 12 marlas. The rendition of accounts was also sought. The petitioners also prayed for appointment of receiver and for issuing further direction regarding the administration of the properties of the Dera.
4. It was also claimed by the petitioners that respondent was appointed as Manager of the Dera by the learned District Judge, Barnala, on 5th November, 1957 and now he has become very old being more than 95 years of age. He is

too weak to walk and to manage the office of the Dera and his brain is not in a fit state of condition and he usually keeps lying. It was also claimed that the respondent has thrown away in exchange most of the valuable lands of the Dera in lieu of the lands which are not only unproductive but of much inferior quality and are at far off place from the Dera. The challenge was also made to alienation by way of exchange of shops and houses for other properties of less value yielding low income as compared to the shops and houses given in exchange. It was claimed that the respondent was not authorized nor empowered to alienate the land, shops and houses and the alienations made are not act of good management on his part.

5. The application was contested.

6. On the pleadings of the parties, the learned trial Court was pleased to frame the following issues :

"1. Whether the applicants are entitled to the leave of the Court to file the suit as claimed? OPA

2. Whether the applicants Nos. 2 to 9 are the persons having an interest in the Dera applicant No. 1 as contemplated by Section 92 CPC ? OPA.

3. Whether the application is not legally maintainable ? OPR.

4. Relief."

7. The parties were allowed to lead evidence and the trial Court by way of detailed judgment, dismissed the application and refused to grant leave to the petitioners to file the suit for removal of the respondent and also rejected the claim against other reliefs. The petitioners preferred an appeal before the learned Additional District Judge, Sangrur. During the pendency of the appeal, respondent Harbhajan Dass died on 10th January, 1984. An application was moved by Mahant Gir Raj Dass with a prayer that on the death of Bawa Harbhajan Dass, the appeal has become infructuous and also that Mahant Gir Raj Dass may be ordered to be impleaded as respondent in the appeal. The application for being impleaded was allowed and Mahant Gir Raj Dass was substituted in place of Bawa Harbhajan Dass in appeal as the legal representative of Harbhajan Dass. The question whether the appeal has abated or not, was kept pending for decision. It is pertinent to mention here that Mahant Gir Raj Dass has also died during the pendency of this revision.

8. The application moved by the respondent claiming that the appeal had been rendered infructuous, was contested by the petitioners on the around that the relief claimed in the plaint with regard to removal of Mahant Harbhajan Dass may have become infructuous, but other reliefs claimed by the petitioners still subsisted. In support of this contention, reliance was placed on the judgment of Hon"ble Calcutta High Court in Abdul Alim Abed v. Mt. Abir Jan Bibi, AIR 1928 Calcutta 363, the judgment of the Hon"ble Allahabad High Court in Tula Ram v. Tikam Singh and others, AIR 1934 Allahabad 315, judgment of the Hon"ble

Supreme Court in Krishna Singh v. Mathura Ahir and others, AIR 1980 Supreme Court 707, judgment of the Hon"ble Patna High Court Shah Najihuddi Ahmed v. Amir Hasan Khan and others, AIR 1934 Patna 443, the judgment of the Hon"ble Madras High Court in Arumuga Thambiran and others v. Namasivaya Pandara AIR 1926 Madras 162 and judgment of this Court in Sh. Rikhu Dev v. Som Dass 1975 Current Law Journal 648. In all these authorities, it has been laid down that a suit filed in representative capacity against the Mahant, which includes relief other than removal of Mahant also, the suit or appeal does not abate on the death of Mahant pending disposal of the suit or appeal.

9. The learned Additional District Judge, however, rejected this plea by observing that the contention raised by the learned counsel for the petitioners could have been accepted if leave was granted by the learned trial Court. The learned Additional District Judge further held that as no suit is pending as on date, it could not be said that the appeal has not become infructuous. Thus, dismissed the appeal as having been rendered infructuous.

10. The learned senior counsel appearing on behalf of the petitioners by placing reliance on the authorities, which were relied upon by the learned Additional District Judge, contended that impugned order cannot be sustained as the finding recorded by the learned trial Court would operate as res judicata in case any suit is filed against the present Mahant and the relief claimed in the previous suit qua other reliefs would not be entertained.

11. This plea of the learned senior counsel appearing on behalf of the petitioners cannot be accepted in view of the law laid down by this Court in the case of Sant Lal v. Sudakar, 2000(2) RCR(Civil) 428 : 2000(2) Civil Court Cases 406, wherein this Court was pleased to lay down that the leave of the Court is a condition precedent and in case the suit is instituted without the leave of the Court, it suffers from such defects as envisaged under clause (a) or clause (d) of Rule 11 Order 7 of the Code of Civil Procedure. This Court has been pleased to lay down as under :

"In Kintali China's case (supra), a learned Single Judge of the Orissa High Court was confronted with the problem, which arose in the case where the plaintiffs instituted the suit and 4 months thereafter, filed the application for leave which had been granted by the trial Court under Section 92 CPC. Among the cases referred for discussion, learned Single Judge's decision of this Court in Prithipal Singh's case (supra) was also cited. But it appears that the other decisions, discussed above including the Division Bench Judgment of this Court in Lachhman Dass's case (supra) were not cited for discussion. Having regard to the intent and purpose of the provisions made in Section 92 CPC. The learned Single Judge held that grant of leave by Court is a condition precedent and it is mandatory."

12. In view of the law laid down by this Court, the finding recorded on an application under Section 92 CPC cannot be said to be finding in a suit which

could operate as res judicata. The petitioners, therefore, can always file a fresh suit to sue the present Chella and claim all the reliefs which were claimed against Bawa Harbhajan Dass as no finality has been attached to the findings as the appeal filed by the petitioners was dismissed as having been rendered infructuous.

13. This revision petition is accordingly disposed of with liberty to the petitioners to file fresh application/suit, if so advised in accordance with law.