

(1965) 12 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 899 of 1960

Kailash Chandra and others

APPELLANT

Vs

Addl. Dist. Judge and others

RESPONDENT

Date of Decision : 01-12-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 92
Constitution of India, 1950 — Article 226

Citation : AIR 1966 All 509

Hon'ble Judges : D.D. Seth, J

Bench : Single Bench

Advocate : D.P. Agarwal, for the Appellant; K.C. Saxena, for the Respondent

Final Decision : Allowed

Judgement

D.D. Seth, J.—This is a petition under Art. 226 of the Constitution. The facts of the case, in brief, are that the District Judge of Moradabad formed a scheme of trust for the temple of Sri Purshottam Bhagwan in 1936 under S. 92 of the Code of Civil Procedure. In April 1959 opposite parties Nos. 2 to 4 filed an application in the court of the District Judge, Moradabad and prayed that such of the trustees as do not take any interest in the trust and do not attend meetings of the board of trustees for a long time should be removed and new trustees be appointed in their places, that the number of trustees should be increased from 5 to 7 etc. Certain allegations were made in the application against the petitioners.

2. The petitioners filed their objections and pleaded that the application was not maintainable as the previous sanction of the Advocate General under S. 92 of the CPC had not been obtained.

3. The Additional District Judge, Moradabad rejected the objections of the petitioners and held that the scheme of the trust could be amended by an application under S. 151 of the CPC and the question of the removal of the present trustees could be taken up only after the scheme had been amended and

this could be either done in the present proceedings or later on.

4. The petitioners, by means of this petition, are challenging the order of the Additional District Judge and have prayed that the same be quashed.

5. I have heard the learned counsel for the parties. Sri D.P. Agarwal, learned counsel appearing for the petitioners urged that the order of the learned District Judge as far as the question of the removal of the trustees in the present proceedings is concerned, was without jurisdiction as the present trustees could not be removed without the previous sanction of the learned Advocate General and as such the application for removal of the trustees was not maintainable.

6. As far as the question of the amendment of the scheme by an application under S. 151 of the CPC is concerned it is now well settled that the amendment can be made. In Rai Ram Nath Bhargava Bahadur and Another Vs. Sri Swami Goverdhan Rangacharia and Others, it was held by a Division Bench of this Court that the court can amend the scheme under S. 151 of the CPC to prevent abuse of the process of court or in the ends of justice. It must, therefore, be held that the order of the learned Additional District Judge with regard to the amendment of the scheme is correct.

7. The order of the Additional District Judge is not in accordance with law as regards the question of the removal of the present trustees in present proceedings is concerned. The learned Additional District Judge has committed an error, which is apparent on the face of the record, in holding that the trustees could be removed after the scheme is amended in present proceedings. The application filed by opposite parties Nos. 2 to 4 was an application under S. 151 of the CPC and was filed without the previous sanction of the Advocate General. Section 92 of the CPC requires that in case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General may institute a suit. The application under S. 151 of the CPC could not be converted into a suit and hence the order of the learned Additional District Judge to the effect that the present trustees could be removed in the present proceedings after the scheme is amended is without jurisdiction.

8. I therefore, allow the petition in part and quash that part of the order passed by the learned Additional District Judge in which he held that the question of the removal of the present trustees could be taken up after the scheme is amended in the present proceedings. Under the circumstances of the case I order the parties to bear their own costs.