

(2008) 12 UK CK 0043

In the Uttarakhand High Court

Case No : Appeal from Order No. 274 of 2007 and Writ Petition No. 820 (M/S)

Lord Radha Krishna Ji Maharaj and Another

APPELLANT

Vs

Acharya Gopal Krishna Goswami and Others

RESPONDENT

Date of Decision : 11-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 12 Rule 6, Order 22 Rule 5, Order 43 Rule 1(U), 96

Citation : (2009) 1 UC 374

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Alok Singh, a/b., Dharmendra Barthwal and Marnta Joshi, for the Appellant; J.C. Belwal, for Respondents Sanjay Vyas and Society of Krishna Consciousness (ISKCON), for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—The above mentioned appeal and the writ petition have arisen out of same suit, wherein two orders dated 12-04-2007, passed by Additional District Judge/II Ird Fast Track Court, Haridwar, in Civil Appeal No. 09 of 2003 and Civil Revision No. 39 of 2003 are challenged. By the impugned order dated 12-04-2007, challenged in the appeal, the First Appellate Court as set aside the decree passed by the trial court and remanded the suit to the trial court to try afresh. The same court vide separate order dated 12-04-2007, passed in the civil revision (challenged through the writ petition) has allowed the revision setting aside the order dated 27-02-2003, whereby trial court had rejected the impleadment application, moved by the Respondent/ revisionist- International Society for Krishna Consciousness (ISKCON) and Sanjay Vyas.

2. Heard learned Counsel for the parties and perused the record.

3. Brief facts of the case are that Appellant/Petitioner No. 1 through its Mahant Shankar Bharti, instituted suit No. 70 of 1985, seeking relief of injunction restraining Defendant No. 1 not to interfere in the management of Puja -

Archana of Plaintiff No. 1 Lord Radha Krishna Ji Maharaj Virajman Mandir Radhakrishna Baikunth Dham Ashram, Bhopatwala, Haridwar, through Plaintiff No. 2 Swami Nigamanand. Defendants No. 3 to 17 namely Tarun Kumar Ganguly, Pandit Sundar Lal (since deceased), Ranchore Das (since deceased), Ram Lal Verma, Chunni Lal Anand (since deceased), Ram Anand, Ram Lal Chadha (since deceased), Lala Anand Prakash (since deceased) and Lala Radheysham, Lala Balak Ram, Lala Krishna Chand, Laia Amrish Kumar, Bipin Kumar, Lala Lal Chand, Lala Prem Chand, being trustees of Plaintiff No. 1, were impleaded as proforma Defendants. It is pleaded in the plaint that one Nihal Devi, who was a religious lady was owner of the land in suit, who executed a gift deed dated 08.12.1930 in favour of one Swami Niranjan Dev Saraswati, who accepted the same and took possession of the land and got constructed a temple and established in it idol of Lord Radha Krishna. Said Swami Niranjan Dev vide registered Will dated 12.02.1943, donated the entire property to Plaintiff No. 1. Niranjan Dev died on 30.10.1985. After his death, Plaintiff No. 1 through Plaintiff No. 2, is managing the affairs of the temple. Defendant No. 1 who was only one of the trustees had no right to execute any deed of the property in suit in favour of International Society for Krishna Consciousness (ISKCON) or any other person. He issued a letter dated 26.07.1985 in favour of ISKCON, the Defendant No. 2 in the month of August 1985, and made an attempt to interfere in the worship and management of Plaintiff No. 1 through Plaintiff No. 2, hence suit was instituted seeking relief against Defendants No. 1 and 2.

4. During the pendency of aforesaid suit, Defendant No. 1 Acharya Gopal Krishna Goswami, filed an application paper No. 157 C along with affidavit paper No. 158 C, before the trial court giving his consent for decreeing the suit. Said settlement was duly signed on behalf of the Plaintiff and Defendant No. 1. Before said application could be disposed of, ISKCON and Sanjay Vyas Das, moved an application before the trial court for their impleadment under Order I Rule 10 of CPC (herein after referred as CPC), which was rejected by the trial court on 27.02.2003. Thereafter, the trial court exercising power under the Order XII Rule 6 of Code of Civil Procedure, decreed the suit against the Defendant No. 1 vide its order dated 03.03.2003, which amounts to a consent decree, as against him. As far as, the second Defendant (Defendant No. 2) is concerned against whom also injunction was sought, it is mentioned in judgment and decree dated 03.03.2003, that the suit was dismissed against him, as withdrawn by the Plaintiff. No relief was sought by the Plaintiff against any other Defendants.

5. Petitioners/ Appellants/ Plaintiffs case is that said decree dated 03.03.2003, was not appealable on behalf of Defendant No. 1 in view of the provisions contained in Sub-section (3) of the Section 96 of CPC as such, appeal filed against said decree was not maintainable before the first appellate court, who has allowed the appeal. It is further pleaded on behalf of the Petitioners/ Appellants/ Plaintiffs, before this Court that the revision filed by ISKCON and Sanjay Vyas Das, challenging the rejection of their impleadment application before the revisional court was also erroneously allowed by the lower appellate/

revisional court. In this connection, it is pleaded in the writ petition that after death of Mahant Shankar Bharti (through whom Plaintiff instituted suit), the revisional/ appellate court not only allowed Sanjay Vyas Das (Respondent No. 4 to writ petition) to be impleaded as legal representative to represent Plaintiff, but also allowed Swami Nigamanand (Petitioner/ Defendant No. 2) to be substituted in place of Shankar Bharti. As such, it is alleged by the Petitioners/ Appellants before this Court that vide order dated 08.01.2007, lower appellate/ revisional court, has taken an illegal approach, as two persons with conflicting interests were directed to be made legal representative of same deceased person. As to the setting aside of the decree passed by the trial court, it is alleged by the present Appellant in the grounds of the appeal, filed under Order XLIII Rule 1 (U) of CPC that first appeal was not maintainable before the lower appellate court, as the decree passed by the trial court was a consent decree. It is further pleaded that no relief had been sought against the proforma Defendants, as such, setting aside of the decree by the lower appellate court and remanding the case for fresh trial is also illegal. As such the order passed in the civil revision No. 39 of 2003, allowing the impleadment application of ISKCON and Sanjay Vyas Das, in the suit, and the order passed in civil appeal No. 09 of 2003, by the lower appellate court (II Ird Fast Track Court, Haridwar), are challenged as illegal and liable to be set aside/ quashed.

6. Perusal of the impugned order dated 12.04.2007, passed in civil appeal No. 39 of 2003, challenged through the writ petition shows that by said order the revisional/ appellate court has allowed the revision, setting aside order dated 27.02.2003, whereby impleadment application of the revisionist ISKCON and Sanjay Vyas Das, were rejected by the trial court.

7. Learned Counsel for the writ Petitioners argued that since no relief was sought either against ISKCON or against Sanjay Vyas Das, as such, the trial court has rightly rejected their impleadment. It is further argued that otherwise also whether document was executed by Defendant No. 1 - Acharya Gopal Krishna Goswami in favour of ISKCON does not transfer any rights in favour of ISKCON, as said person had no right to transfer the property without the consent of the other trustees running the temple of Plaintiff No. 1. When there was neither any relief sought against ISKCON nor they have any right of interference, the revisional court has erred in law by allowing the revision of Respondent (revisionist) ISKCON and Sanjay Vyas Das. Apart from this, attention of this Court is drawn to the fact that during the pendency of the appeal and the revision before the lower appellate court, two different persons are directed to be impleaded as legal representatives of deceased Shankar Bharti through whom Plaintiff No. 1 instituted the suit. Sanjay Vyas Das, who sought to be impleaded as Defendant was directed to be impleaded as legal representative of the Plaintiffs himself and simultaneously vide same order dated 08.01.2007, Swami Nigamanand was also permitted to be impleaded as legal representative of the same person, as such, the persons of contradictory interests were directed to be impleaded as legal representatives by the revisional/ lower appellate court.

Having gone through said order dated 08.01.2007, passed in civil appeal No. 09 of 2003, a copy of which is part of annexure-6 to the writ petition, this Court finds it is true that lower appellate/revisional court, has taken an approach unknown to law. Said court has failed to determine the question, required under Rule 5 of Order XXII of CPC and by allowing two different substitution applications, made a mockery of law.

8. Next submission advanced on behalf of the Petitioners/Appellants is that though no appeal was maintainable against the consent decree, the first appellate court has not only entertained the appeal but also allowed the same as such, committed gross error of law. Sub-section (3) of Section 96 of CPC bars an appeal by a person against whom a consent decree is passed. It is pertinent to mention here that copy of plaint shows that the relief had been sought by the Plaintiff only against Defendants No. 1 and 2, and vide impugned judgment and decree dated 03.03.2003, the trial court had decreed the suit against the Defendant No. 1 only and dismissed the suit as against Defendant No. 2 against whom Plaintiff had withdrawn the suit. As far as Defendant No. 1 - Acharya Gopal Krishna Goswami is concerned under Sub-section (3) of Section 96 of Code of Civil Procedure, appeal was not maintainable by him. As far as Defendant No. 2 - Sanjay Vyas Das, is concerned, suit had been dismissed, as such, he was not an aggrieved person. Perusal of Memorandum of appeal, filed before first appellate court, shows that the appeal filed by Acharya Gopal Krishna Goswami (Defendant No. 1), who had already moved an application 157 C along with affidavit 158 C before the trial court, admitting the claim of the Plaintiff (as is also apparent from annexure-2 to the affidavit filed with the appeal under OrderXLIII Rule 1 (U) CPC) The decree passed by the trial court is based on the admission made by Defendant No. 1, as such, it cannot be said that the trial court had committed any error of law in decreeing the suit under Rule 6 of Order XII of CPC That being so, the appeal was not maintainable on behalf of the Defendant No. 1 as the appeal was barred under the provisions of Sub-section (3) of Section 96 Code of Civil Procedure

9. For the reasons as discussed above, the appeal as well as the writ petition deserve to be allowed. The same are allowed. The impugned order dated 12.04.2007, passed by the Illrd Fast Track Court/Additional District Judgejjp civil appeal No. 09 of 2003, and order dated 12.04.2007, passed in civil revision No. 39 of 2003, are hereby set aside. However, no order as to costs.