
(1917) 04 AHC CK 0028
In the Allahabad High Court

Mahant Baba Dharam Das, Secretary and Others	APPELLANT
Vs	
Mahant Dharam Das and Others	RESPONDENT

Date of Decision : 03-04-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1917 All 336 : 40 Ind. Cas. 182

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Piggott, J.—This appeal is in substance covered by the orders passed in First Appeal No. 222 of 1915. See 40 Ind. Cas. 177-Ed. I think these appellants were placed in a difficulty by the procedure followed in the Court below, and that it is not easy to say whether the present appeal is to be treated as one against the decree in Suit No. 2 of 1914 or against the decree in Suit No. 3 of 1914, or both. I have made it clear that these appellants are bound, and must remain bound, by the decree in Suit No. 3 of 1914, as confirmed by this Court in appeal. In view of this fact it is of little practical importance what orders are passed in respect of the decree in Suit No. 2 of 1914. In my opinion that decree is open to formal objection in that it contains a direction that the parties to Suit No. 3, including those not impleaded at all in Suit No. 2, "be divested of any right or interest" in the property in suit. I have stated that the procedure followed in the Court below was, in my opinion, faulty; but having adopted that procedure, the learned District Judge should have been consistent. My order would be that the words "as well as in Suit No. 3" be removed from the decree passed in Suit No. 2 of 1914; but to avoid all possibility of misunderstanding, I would add to the decree of this Court a declaration that nothing in this decree must be deemed to affect or to modify in any way the decree passed in First Appeal No. 222 of 1915, or the rights or liabilities of any of the parties concerned under the decree of the Court below in Suit No. 3 of 1914.

2. I am quite aware that in modifying in any way the decree passed in Suit No. 2 of 1914 we must necessarily disregard the objection that the present appellants, not having been made parties to that suit, have technically no right of appeal against that decree. A sufficient answer to this would be that the modification may be treated as made in the exercise of the revisional jurisdiction of this Court.

3. As regards costs, I would leave the appellants in this appeal to bear their own costs in this Court and in the Court below, permit Swami Govinda Nand to recover his costs from the trust property, and affirm the order of the Court below leaving all other parties to bear thrown costs.

Walsh, J.

4. I agree. There are no merits in this appeal nor for that matter in the other. I think the view contended for by the Panchayati Akhara in this Court is inconsistent with the attitude adopted by them at the hearing of the suit. The Judge below has come to a reasonable conclusion on the facts and I see no reason for differing from him. He seems to have taken great pains to find out what is best for the trust and to have given every one concerned a full hearing. The orders now proposed are sufficient to correct any defect in the form of the proceedings in the Court below, I should have been prepared to go further and to add a direction that those in possession be ordered to hand over possession of all trust property in their possession to the successful plaintiff, even though no appeal was before us on this point. It is not so much a question of the rights of the parties as giving effect to the real decision of the Court in a matter of serious public concern. It seems to me anomalous, to say the least of it, that a fresh suit should have to be brought to enforce the order of the Court in a matter of this kind. In such cases the provisions of the law ought to be, and, in my opinion, are strong enough to compel actual physical compliance with the decision arrived at. As a matter of interpretation and by analogy to the established practice of the Chancery Court in England administering trusts, the words "such further or other relief as the nature of the case may require", which are expressly inserted in Section 92 of the Code of Civil Procedure, cover every subsidiary order or direction on any matter of detail necessary for carrying out the main purposes of the section. This has been clearly recognised in Bengal where the High Court with original jurisdiction has necessarily to consider this matter more frequently than in the High Court in this Province. Vide *Sajedur Raja Chowdhuri v. Gour Mohun Das Baishnav* 24 C. 418 : 12 Ind. Dec. 946.

5. Further, where more than two suits in a matter of this kind have been sanctioned by the Legal Remembrancer and are brought to trial, although with different parties, in the same Court, at the same time, on the same subject-matter, under the same circumstances and for the same kind of relief, a Judge has clearly power under the Code to consolidate the suits, that is to say, for the purpose of the hearing to merge them into one, and treat them as one for all practical purposes. That is in substance what this learned Judge did with the tacit consent of those who appeared before him, representing the different parties. In

my opinion if he had made an express order to the same effect even without the consent of the parties, he would have been acting clearly within his jurisdiction and would have been taking what is obviously a Convenient course. This view is supported by two very careful judgments, one by Mr. Justice Woodroffe in *Hukum Chand Boid v. Kamalanand Singh* 33 C. 937 : 3 C.L.J. 67 and the other by Mr. Justice Mookerjee in *Nand Kishore Singh v. Ram Golam Sahu* 18 Ind. Case. 207 : 40 C. 955 : 16 C.L.J. 508 with every word of which I agree.

6. The decree of the Court below passed in Suit No. 2 of 1914 is modified to the extent that the words "as well as in Suit No. 2" appearing in the said decree are directed to be removed, with a declaration added thereto to the effect that nothing in the said decree must be deemed to affect or modify in any way the decree passed in First Appeal No. 22 of 1915, or the rights or liabilities of any of the parties concerned under the decree of the Court below in Suit No. 3 of 1914.

7. The appellants do bear their own costs in this Court and in the Court below. Swami Govinda Nand is permitted to recover his costs from the trust property, and the order of the Court below leaving all other parties to bear their own costs is affirmed.