

(1986) 10 AHC CK 0074
In the Allahabad High Court
Case No : Civil Revision No. 601 of 1986

Mahant Gurmukh Das

APPELLANT

Vs

Bhupal Singh and Others

RESPONDENT

Date of Decision : 20-10-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92, 92(1)

Citation : (1987) 1 AWC 233

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : K.B.L. Gaur, for the Appellant; H.S. Nigam, for the Respondent

Final Decision : Disposed Of

Judgement

V.K. Mehrotra, J.—Even though the case is listed for admission today, as prayed jointly by Sri K.B.L. Gaur, for the Applicant and Sri H.S. Nigam, appearing for the opposite parties, I have heard them at some length and proceed to decide the revision finally.

2. After its amendment by CPC (Amendment) Act, 1976 with effect from February 1, 1977 Section 92 Code of Civil Procedure, in so far as it is material, reads thus:

92. Public charities (1) in the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the leave of the court, may institute a suit, whether contentious or not, in the principal civil court of original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-

(a)...

A perusal of this provision shows that where a person other than the Advocate General, wishes to institute proceedings in respect of a trust created for public purposes of a charitable or religious nature, he has to obtain leave of the Court. The person who can do so has to be a person "having an interest in the trust". The intendment of this provision is obvious. When a person claims to have an interest in the trust and the claim is disputed by the opposite party, the court should apply its mind to the question on the basis of the material on record and come to a conclusion, prima facie though it may be, on the question whether the person seeking its leave can be treated to be a person having an interest in the trust.

3. In the instant case, the opposite parties, who made the application for leave of the court u/s 92(1), sought the leave on a statement that they were interested in the trust though they did not say so very specifically. It is true that in the rejoinder affidavit filed in the proceedings before the learned Addl. District Judge it was stated that they were Kabir panthis and they used to go to the temple, yet it is clear that on the categorical assertion contained in the objection filed by the present Applicant and in the affidavit, filed on his behalf that the six Applicants (opposite parties in this revision) had no interest in the trust, the matter should have been gone into by the learned Judge and a conclusion recorded on the basis of the evidence adduced before him.

4. In the impugned order it has been observed by the learned judge that..."at the stage prima facie it is to be seen whether the Applicants have interest in the trust and whether the application falls within the purview of Section 92 CPC The Applicants have alleged themselves to be the followers of the Panth ...This is the entire consideration of the question whether the Applicants were persons having interest in the trust. In the context of the facts of the instant case, where, admittedly, parties are at issue on this question and have led evidence before the learned Judge, it was necessary for him to have recorded a definite finding about it.

5. Without saying anything further, lest it may prejudice either of the parties, I set aside the impugned order dated August 12, 1986 and direct the learned Addl. District Judge to consider the matter afresh in accordance with law expeditiously. He shall try to dispose of the application, as far as possible, within three months of the date on which any of the parties appears before him with a certified copy of this judgment after notice to the other side.

6. The revision shall stand finally disposed of in the aforesaid terms. Costs on parties.

7. A copy of the judgment may be made available to the learned Counsel for the parties within a week from today on payment of necessary charges.