

(1968) 12 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 290 of 1967

Murti Shri Raghunath Ji

APPELLANT

Vs

Joginder Singh and Others

RESPONDENT

Date of Decision : 16-12-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3
Punjab Agricultural University Act, 1961 — Section 12(2)
Societies Registration Act, 1860 — Section 6

Citation : (1970) 2 ILR (P&H) 23

Hon'ble Judges : Ranjit Singh Sarkaria, J

Bench : Single Bench

Advocate : M.P. Maleri, for the Appellant; H.L. Soni, for the Respondent

Final Decision : Dismissed

Judgement

Ranjit Singh Sarkaria, J.—R.S.A. 290 of 1967 is directed against an order, dated 6th February, 1967, of the learned Additional District Judge, Ambala, by which he rejected the appeal of the Plaintiff under Order 41, Rule 3, Code of Civil Procedure, on the ground that it had not been filed by a person duly authorised by the Plaintiff, namely, Moorti Shri Raghunath Ji installed in temple situated at Jagadhri. It arises out of the following facts:

2. Moorti Shri Raghunath Ji installed in Temple situate at Jagadhri instituted a suit for perpetual injunction, restraining Defendants 1 to 7 from transferring possession of the suit-property to Defendant No. 8 (D.A.V. College Managing Committee) and Defendant No. 9 (Shri Ram Lal, Headmaster, G.S.A.S. High School, Yamunanagar) and also for restraining Respondents 8 and 9 from entering into possession of the suit-property and making constructions thereon. The Subordinate Judge, Jagadhri, partly decreed the suit against Defendants 1 to 4, 8 and 9, but dismissed the same as against Defendants 5 to 7. Against that decree, the Plaintiff went up in appeal to the District Judge. A preliminary objection was raised before the Additional District Judge, that the appeal had not

been properly filed, inasmuch as it was not filed by the Plaintiff or any person authorised by Shri Dharam Asthan Committee, who was acting on behalf of the Plaintiff as the Mohtmim. This objection prevailed with the Additional District Judge, who, in consequence, rejected the appeal. Hence this second appeal against the order of the Additional District Judge.

3. Learned Counsel on behalf of the Appellant contends that the plaint in the suit had been signed by the Chairman and the Secretary of Shri Dharam Asthan Committee, who had engaged Shri Laxmi Chand as counsel for the Plaintiff in pursuance of a resolution passed by Shri Dharam Asthan Committee, Dr. Rameshwar Dass, President, and Shri Brij Lal, Secretary of the Committee had signed the power of attorney in favour of Shri Laxmi Chand, Advocate, who was authorised thereunder to file an appeal to the District Judge. It is stressed that the appeal was only a continuation of the original suit, and the authority given by the Committee per its resolution, dated 21st October, 1964, will include an authority to file an appeal from any adverse decision of the trial Court. Thus, it is maintained that there was sufficient compliance with the requirements of Section 6 of the Societies Registration Act, 1860 (Act No. 21 of 1860) (hereinafter called "the Act"). It is further pointed out that the provisions of Order 41, Rule 3, Code of Civil Procedure, are discretionary as is indicated by the word "may", and that in these circumstances, when the memorandum of appeal had been signed by Shri Laxmi Chand, Advocate, who was the duly constituted attorney of the Committee, the Additional District Judge should not have rejected the appeal, but given further time to the Appellant to remove the defect, if any, in the memorandum of appeal. In support of his contention, Mr. M. P. Maleri has referred to *Lohku and Another Vs. Bhola Ram*, .

4. In reply, Mr. H.L. Soni, learned Counsel for the Defendant-respondants, contends that though the resolution authorising Shri Dharam Asthan Committee to file the suit has been referred to in para 12 of the plaint, this allegation made in the plaint was not admitted, but was denied by Defendants 4, 5, 6, and 7 in their written statements. Defendant No. 8 (D.A.V. High School) raised a specific objection in its written statement that Shri Dharam Asthan Committee had no locus standi to file the suit. Consequently, an issue was framed on this point. In spite of the fact that the authority of Dr. Rameshwar Dass, President, and Shri Brij Lal, Secretary, who filed the suit, was being challenged, this document, which purports to be a copy of the resolution of the Committee, was never proved or referred to in the evidence of Dr. Rameshwar Dass, who appeared as P.W. 2. Mr. Soni has further emphasised the fact that this resolution was never referred to even at the time of arguments either in the trial Court or before the District Judge. Nor has it been mentioned in the grounds of appeal filed in this Court. In these circumstances, maintains Mr. Soni, counsel for the Appellant cannot be allowed to refer to this unproved document and build his argument thereon. In the alternative, Mr. Soni contends that even if the aforesaid resolution is construed as an authority given to Dr. Rameshwar Dass and Shri Brij Lal to file the suit, it could not be construed as giving them an authority to file

the appeal, for the simple reason that the appeal was not a continuation of the suit. In the absence of any bye-laws or regulation of the Society, nothing short of a fresh resolution specifically authorising Dr. Rameshwar Dass or Shri Brij Lal or even Shri Laxmi Chand, Advocate, to file the appeal, was sufficient in view of Section 6 of the Act. In support of his contention, learned Counsel has relied on a decision of a learned Single Judge of this Court in Punjab Agricultural University, Ludhiana and Ors. v. Messrs Walia Brothers, Banur Road, Kharar, district Ambala ILR (1968) 2 P&H. 250, by P. C. Pandit, J.

5. It is really unfortunate that the document which Mr. Maleri refers to as the resolution of the governing body of the Society was never proved or even referred to in evidence in spite of the fact that the authority of Dr. Rameshwar Dass, President, and Mr. Brij Lal, Secretary, was questioned by the Defendants in the pleadings and an issue was framed on that point. There is no force in the contention of Mr. Maleri that no objection was taken at the time when this document was let in evidence. In fact, this document was never tendered in evidence. The objection was never abandoned. An issue was pressed on the point. Consequently, the Appellant cannot rely on that document and build an argument on that unproved document.

6. Even if it is assumed for the sake of argument that this document can be taken into consideration despite its having not been duly proved, then also it will not be a sufficient compliance with the provisions of Section 6 of the Act, which reads as follows:

6. Suits by and against Societies.

Every society registered under this Act may sue or be sued in the name of the President, Chairman, or Principal, Secretary, or Trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion.

Provided that....

7. The words for the occasion" in Section 6 are significant. Whereas under the standing rules and regulations of the Society, a general authority can be conferred on the Chairman or the Secretary or any trustee of the society, for suing or being sued on behalf of the Society, an authority given by means of a resolution of the governing body has to be limited to the "occasion" concerned. In drawing the distinction, the object which the legislature seems to have in view, was that registered Societies should not embark upon needless and endless litigation, frittering away their energy and wasting the funds of the Societies. They must at each distinct stage of the litigation take stock of the situation and decide, whether or not it would be proper to pursue the matter further. Thus, even if it can be assumed for the sake of argument that the governing body of Shri Dharam Asthan Committee had authorised its President and Secretary to institute the suit by passing a resolution, then also that authority cannot be

deemed, in view of the aforesaid provisions of Section 6 of the Act, to include an authority to file an appeal from the decree of the trial Court, which was to a substantial extent in favour of the Society. There is nothing to indicate that after the decision of the suit by the trial Court, the Society reviewed and re-assessed the situation and then passed another resolution, authorising the Secretary or its President to file an appeal against that decision.

8. In the Punjab Agricultural University's case (2), Messrs Walia Brothers sued the Punjab Agricultural University for the recovery of Rs. 3,20,000 with interest. In the appeal before the High Court, an objection was taken that the Punjab Agricultural University, Ludhiana, being a corporate body, its proceedings were conducted by the resolutions of its Board of Management, and that since the Board had passed no resolution to the effect that an appeal should be filed, authorising the Vice-Chancellor of the University, the appeal had not been properly instituted and was liable to be dismissed on that ground. Counsel for the University referred to the powers of the Vice-Chancellor u/s 12(2) of the Punjab Agricultural University Act, 1961, and item No. 27 in Schedule Part "B", given at page 109 of the University Act and Statutes of 1967-68. In Section 12(2), it is mentioned that the Vice-Chancellor shall exercise general control over the affairs of the University and shall be responsible for the maintenance of discipline at the University. Dealing with this argument P.C. Pandit, J., observed that the provisions referred to by the counsel for the University did not authorise the Vice-Chancellor to institute an appeal. It was also held that item No. 27 also, which empowered the Vice-Chancellor to sanction expenditure in connection with civil suits instituted "with the sanction of the Vice-Chancellor," did not confer any power or authority on the Vice-Chancellor to file any particular suit, or an appeal, and that nothing short of a resolution of the Board of Management, authorising the Vice-Chancellor to file an appeal, would constitute a valid authority for the purpose.

9. Their Lordships of the Supreme Court have held in *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, , (a judgment which has been referred to in *Punjab Agricultural University's case*, (2) that though an incorporated body, like a University, was a legal entity, it had neither a living mind nor voice. It could only express its will in a formal way by a formal resolution and so could only act in its corporate capacity by resolution properly considered, carried and duly recorded in the manner laid down by its constitution. Same rule was laid down by the Lahore High Court in AIR 1943 318 (Lahore) .

10. I have no quarrel with the argument that the provisions of Order 41, Rule 3, Code of Civil Procedure, are discretionary as is indicated by the word "may". But there is nothing in the circumstances of the case, to indicate that this discretion was wrongly exercised by the Additional District Judge. The result is that the appeal fails and is hereby dismissed. In the circumstances of the case, there will be no order as to costs.