

(1983) 12 AHC CK 0016
In the Allahabad High Court
Case No : Civil Revision No. 325 of 1983

Radhaswami Satsang Sabha	Vs	APPELLANT
Smt. Puttan (deceased by L.Rs.) and Others		RESPONDENT

Date of Decision : 16-12-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : AIR 1984 All 198

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

Bench : Single Bench

Advocate : Swami Dayal, for the Appellant; T.S. Hitkari, A.R.B. Kher and Guru Dayal Srivastava, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—In this revision u/s 115. C.P.C. the plaintiffs of a suit filed as far back as in the year 1942, have challenged an order passed by the Second Additional Civil Judge. Agra on May 20, 1993 rejecting their applications for an order under Rule 8 of Order 1. C.P.C. in respect of the defendants. The revision was admitted to a fuller hearing by this Court on July 14, 1983 and was heard finally with the consent of the parties, in October, 1983.

The background :

2. The litigation has had a chequered history. The suit (No. 1 of 1942) out of which this revision arises, is pending as First Appeals Nos. 239 and 301 of 1961 against the decree of the trial Court dated July 5, 1961 by which two out of three, reliefs prayed for were granted. Without going into the antecedent history in detail, only this need be observed that in appeals taken to if by special leave against an order made by this Court on miscellaneous applications in these First Appeals, the Supreme Court gave a judgment on October 21, 1965, with the consent of the parties. The plaintiffs were permitted to amend the plaint, subject to the modifications indicated in the judgment and to add some additional

defendants to the suit. The amended plaint and the written statements filed by the parties were taken on record and 49 issues of which a list was appended as Schedule "A" to the judgment, arising from these pleadings, were framed for findings by the trial Court which was directed to set down the hearing of the issues at an early date and after the evidence had been recorded, to make its findings and submit the same to the High Court. The High Court was directed to hear the two First Appeals on receipt of the findings after the parties had filed their objections, if any. The Supreme Court also expressed hope that the parties would co-operate with the trial Court in the expeditious trial of the fresh issues and would assist in early termination of the litigation. That hope, however, has so far remained unfulfilled for with their tenacity and ingenuity the Parties have so far not permitted the trial Court to proceed in the manner directed by the Supreme Court. The present is a typical case where Judges, with all their sincerity have failed to see the end of the litigation concerning an Institution, so piously brought into being for spiritual solace by undoubted Masters.

3. The warring factions involved in the suit subscribe to the same faith known as Radhaswami Faith. The founder of the Faith was Somaji Maharaj who departed from this world in 1878-Hazur Maharaj succeeded him and thereafter in 1898 Maharaj Saheb succeeded Hazur Maharaj. He left this world in 1907. These three Sant Satgurus are recognised and acknowledged by the followers of the Faith and their holy ashes which lie enshrined in Samadhs are revered by all the followers of the Faith. Considerable properties are owned by the Faith. The dispute is about the right to enjoy and manage these properties as well as the right to visit the Samadhs and offer prayers and worship according to the tenets of the Faith.

4. In 1902 a body of persons known as Central Administrative Council (for brief, CAC) was elected at the suggestion of Maharaj Saheb to administer and manage the Satsang properties and the offerings for the object of Satsang. A smaller body out of its own members, was elected by the Council in the year 1904 and was called the Radhaswami Trust. The administration of the property was left in the hands of these trustees. The members of the Trust are defendants in the suit. A society, registered under the Societies Registration Act, called the Radha Swami Satsang Sabha (for brief, the Sabha) together with 13 others instituted the suit as plaintiffs. The occasion for it arose when, in an earlier suit No. 50 of 1924, the defendants of the suit as plaintiffs partly succeeded before the Privy Council. The grievance of the plaintiffs was that it was not open to a group of the followers of the Faith to put impediments in the path of those followers of the Faith who chose to follow the lead of Hazur Sarkar Saheb and thereafter his holiness Sahebji Maharaj after the death of Maharaj Saheb in the year 1907. The other faction of followers does not recognise either Sarkar Saheb or Sahebji Maharaj as Sant Saleurus. The Privy Council, which gave its judgment on March 5, 1935, took the view that the Radha Swami Trust was not a legal and valid Trust and the Trust, if any, was not a trust created or existing for a public purpose of a religious and charitable nature or one to which the provisions of Act

14 of 1920 applied. The Privy Council did not pronounce any opinion on the question whether the members of the Society had any beneficial interest in the property in question and a right to visit the Samadhs for worship or not. In the present suit (No. 1 of 1942) the defendants of the earlier suit, as plaintiffs, claim that they are beneficially interested in the properties and are entitled to visit the Samadhs to offer worship. Further, that the present defendants are liable to render accounts of the management of the properties as their status was that of managers of religious endowment. The decree of the trial Court dated July 5, 1961, under challenge in the two First Appeals, has granted to the plaintiffs the relief of permanent injunction restraining the defendants from obstructing the plaintiffs or any adherent of the plaintiff Sabha in participating in the enjoyment of the properties in the suit and also restraining them from preventing the plaintiffs from visiting the Samadhs to offer worship. It also directs the removal of the defendants from the management of the properties. The relief relating to the accountability of the defendants has been refused.

5. The defendants, after the aforesaid decree are said to have thought of a device to thwart its implementation and one of the actions said to have been taken by them was that the CAC passed a resolution in May, 1962 suspending the Trust and taking the management of the properties in its own hand with the result that a different set of persons came into the management of the properties and the plaintiffs, who had obtained the decree in the trial Court, became exposed to the risk of a challenge by the members of the CAC. Then they moved this Court for adding the members of the Council to the First Appeals pending in this Court and that prayer having eventually been refused they approached the Supreme Court, by special leave, in the appeals which were disposed of by the judgment of October 21, 1961.

6. When the matter went back to the trial Court after the Supreme Court judgment of October 21, 1961 some interrogatories were served upon the defendants by the plaintiffs. The trial Court disposed of the application and in respect of the order relating to one of them. Civil Revision No. 957 of 1974 was filed in this Court. That was disposed of on November 4, 1982. The Supreme Court affirmed the order and while dismissing the SLP on March 25, 1983 attained expression that wiser counsel will prevail over the parties and the suit allowed to proceed. It directed that the suit be taken up for hearing immediately and be heard from day-to-day and be disposed of without granting adjournment on frivolous grounds. Unmindful of all this, the parties are again before this Court in the present revision which has been argued to borrow the words of Vivian Boss. J., "with crusading pertinacity" by the counsel for both the parties. It seems the parties are really not keen to see the proceedings come to an end.

7. Now, to the problem in the instant case: The application under Order 1, Rule 8 C.P.C. is dated March 23, 1983 and the prayer made is that Sri Bhai Lal Bhai K. Patel and Dr. Bhagwan Prasad Saxena, President and Secretary of the CAC who are defendants (Nos. 23 and 321) be permitted to defend the suit on behalf of

and for the benefit of all the defendants i.e. all the members of the Central Administrative Council and thus the Central Administrative Council and the plaintiffs be permitted to sue them as such by according the requisite permission under Order 1 Rule 8. CPC. The defendants objected to the prayer being granted and one of the reasons put forward was that the plaintiffs had deliberately avoided to make the CAC a party to the suit, and did not file it under Order 1. Rule 8. C.P.C. which was even other-wise not applicable to the case. The objection has been supplemented by the submission in this Court that of the issues which were to be tried in pursuance of the judgment of the Supreme Court of October 21, 1965 issues Nos. 4 and 5 would be rendered nugatory if this application under Order 1. Rule 8, C.P.C. were to be allowed. And, the issues are these :

"4. Is this suit maintainable without any leave under Order 1. Rule 8 of the CPC either with regard to the plaintiffs or with regard to the defendants?

5. Is this suit bad for non-impleading all members or followers of the Dayalbagh group and for having been instituted without leave under Order 1. Rule 8. C.P.C.?"

Likewise, it is said that issue No. 42, namely were the members of Central Administrative Council necessary parties when the suit was filed?" will also be rendered substantially unnecessary if the permission is given to the plaintiffs under Order 1, Rule 8. C.P.C. as now prayed. These issues were directed to be tried by the Supreme Court to use its own words in the judgment of October 21, 1965 because "the sole object in adopting this somewhat unusual course is to attempt to bring to an end this protracted litigation by enlarging the scope of the suit by the addition of new defendants, for such enlargement would prevent a subsequent suit by the parties so added."

8. The Supreme Court, as is clear from its judgment of October 21, 1985, "felt disturbed by the thought that if the members of the Council are not permitted to be joined to the present appeals it would mean another round of protracted costly and tortious litigation." because in the words of the learned Judge, "it appeared to us almost inevitable that the decision in the present appeals pending before the High Court could amount to no more than a semicolon in the present litigation and that the parties would have to face each other once again though the fight at the subsequent stage would be between the plaintiffs on the one hand, and the members of the Council on the other. When we expressed this apprehension to the learned counsel who appeared for the plaintiffs the defendants, and the members of the Council, they readily agreed that it would be reasonable fair and proper that an attempt should be made to shorten if possible the life of this litigation and it was not disputed that the only way in which such an attempt could be effectively made was to allow the plaintiffs to add the members of the Council to the appeals pending before the High Court..... Thereafter, an application for amendment of the plaint was filed on behalf of the plaintiffs. The defendants and the members of the Council filed two miscellaneous petitions The written statements which had been filed in

the meanwhile by the defendants and the members of the Council were taken on record and counsel for all the parties were requested to file in court an agreed statement of facts and an agreed list of issues arising from the new pleadings which have been allowed to be filed by us..... The result of these orders, in substance, is that several persons will now be added as defendants, to the suit and between them and the original plaintiffs, the issues to which we have already referred, will have to be triedWhen these issues are tried. the trial Court will record its findings on them and these findings will be forwarded to the High Court..... The result is. by the consent the appeals before us are allowed, the plaintiffs are allowed to amend the plaint subject to the modification indicated in the course of this judgment and and the members of the Council as additional defendants to their plaint.....

9. It was stated in this Court by Sri V. P. Misra appearing for the opposite parties in this revision, that at the time when the revision was to be heard by this Court, all the persons who were the elected members of the C.A.C. at pre-sent were parties to the revision and that no such member had been left out from the array of parties. From this statement it is clear that the C.A.C.. though not impleaded as a party to the proceedings us such, is represented before the Court through all its members. It is also clear that two if such defendants opposite parties, namely, Sri Bhai Lal Bhai K. Patel and Dr. Bhagwan Prasad Saxena, are correctly the President and the Secretary of the C.A.C. They are defendants Nos. 23 and 32 in the suit as is evident from a perusal of the certified copy of the amended plaint which was handed over by Sri Swami Dayal, one of the counsel for the plain-tiffs-applicants after obtaining it on October 31, 1983.

10. Annexure 3 to the affidavit of Sri K.B. Bhatnager filed in support of the application for an interim order made by the plaintiffs-applicants in this revision, is a copy of the application made by the plaintiffs under Order 1. Rule 8 C.P.C. before the court below which has been disposed of by the order impugned in this revision. In it after giving some antecedent facts, it has been stated in paragraph 11 that--

"The plaintiffs submit that the controversies and disputes affect the numerous persons, their rights, claims and contentions pertaining to the suit properties as also the rights of worship and visit to the Samadhis. The defendants. Central Administrative Council claims to represent the interest adverse to that of the plaintiffs. The composition of the said Central Administrative Council also changes from time to time. It is submitted that having regard to the fact that the members of the Central Administrative Council are numerous and the composition of the Council also changes from time to time, it is a fit case in which this Hon"ble Court may be pleased to give necessary directions for suit being tried as the representative suit within the meaning and for the purpose of Order 1. Rule VIII of the Code of Civil Procedure",

And in paragraph 12 it has been mentioned that--

"In the circumstances it is advisable and necessary though not obligatory that in order to cut short the further prolongation of the suit and to avoid any mis-interpretation of judgment of Hon''ble Supreme Court dated 21-10-1965 and to stop any further possible technical pleas by the defendants, that as the members of the Central Administrative Council are numerous but have some interest in this suit, this Hon''ble Court be pleased to direct under Order 1. R, VIII. C.P.C. that Shri Bhai Lal Bhai K. Patel President of the Central Administrative Council and Dr. Bhagwan Prasad Saxena. Secretary of the Central Administrative Council be sued and they be permitted to defend the suit on behalf of and for the benefit of all defendants i.e. all the members of the Central Administrative Council and thus the Central Administrative Council".

11. The background in which the application was made before the court below and the prayer contained in it clearly rules out the tenability of the objection that by allowing the prayer of the plaintiffs issues Nos. 4 and 5 or issue No. 42, would be rendered. redundant or unnecessary. Those issues will still have to be tried on their merits between the parties and the conclusion thereon would be open to scrutiny by this Court when it proceeds to hear the two first appeals in pursuance of direction of the Supreme Court made on Oct. 21, 1965. The only effect of according permission under Order 1. Rule VIII C.P.C. at this stage would be that it will obviate a challenge by any member or office-bearer of the C.A.C. hereafter elected to the binding nature of the decision given in these appeals. The controversy whether the suit was not maintainable or bad for non-joinder of all the members or followers of the Dayalbagh group or for the absence of leave under Order 1. Rule VIII. C.P.C. with regard to the plaintiffs or whether it was necessary to implead the members of the Central Administrative Council as parties to the suit when it was initially filed would still have to be gone into by the court irrespective of its decision at this stage to make the decree passed in the appeals binding upon the members of the C.A.C. now before the court or hereafter elected as such. No execution can be taken to the view expressed by the trial Judge in the impugned order that it would be convenient and expedient for bringing the litigation to a speedier end, to accord leave under Order 1. Rule 8. C.P.C. as prayed for by the plaintiff. It cannot be gainsaid that the principle engrafted in the rule is a salutary one and is calculated to ensure convenience in the disposal of a controversy between the parties. In the case of an unregistered body like the C.A.C. of which the members are several and keen on chancing from time to time, the only proper and convenient mode to sue them and to bind them with the consequence of the decree eventually following is that leave under Rule 8 of Order I. C.P.C. should be granted by the court. The legal position has succinctly been stated by M. P. Mehrotra. J.. in his judgment of April 22, 1975 in Civil Revision No. 549 of 1972 (Dr. P.K. Banerji v. Banaras Hindu University) when after referring to very large number of decided cases, he said that--

"..... the office-bearers and members of an unincorporated unregistered association go on changing and X. who happened to be in actual occupation as an office-bearer of the association on the date of the institution of the suit, might

have left and some other persons might have entered into occupation during the pendency of the suit. It is an impossibility to go on impleading persons from time to time in consequence of such changing situations. Moreover, such persons do not have occupation in their own right they act and occupy on behalf of the association. A decree against X. in such situation will be wholly ineffective unless the decree is obtained against him in a representative capacity. Even if it be possible to keep track with the changes from time to time in the occupants of a property, still, in my opinion, as a rule of convenience a recourse to Order 1. Rule 8 will be appropriate and effective in granting relief to the plaintiff."

And further that-

"..... A decree against individual members will be very often meaningless as such members will have no personal interest in the occupation, of the premises. If a decree is passed against X personally the same cannot be binding against Y who in the meantime, may have succeeded X as the office-bearer of such an association or body. Y cannot be deemed to be a representative of X in such a situation. Therefore the only way in which the decree obtained against X can be executed against Y will be where X is sued in a representative capacity to represent the entire body of the membership of the association or the body. From a practical point of view, in my opinion, if an accommodation or premises have been given to an unincorporated unregistered association for its occupation then it is only by taking recourse to the provisions of Order 1. Rule 8. C.P.C. that possession can be got back by the owner or the landlord of the accommodation in question. Even if individual persons can be sued, still Order 1. Rule 8 provides a more convenient method of suing."

The learned Judge was concerned with a case where a suit for ejectment had been filed by the owner of a property against Rashtriya Swayam Sewak Sangh. Banaras Hindu University Branch through its President and Secretary for recovery of possession of the property. The reason put forward for permission being granted to sue the defendants in a representative capacity was that the Rashtriya Swayam Sewak Sangh was an unregistered organisation with numerous members and office-bearers who kept on changing from time to time,

12. The trial Judge felt difficulty in granting the leave in this case as according to him being a court to which certain specific issues had been remitted for trial, he had limited jurisdiction and could not entertain the prayer for leave under Order 1. Rule 8. C.P.C. which might have led to compliance of procedural requirement of notice etc. and thus necessitated departure from what he had been asked to do by the Supreme Court. This constraint would not have unduly bothered the trial Judge if he had kept in mind the basic object with which the Supreme Court had directed the trial of issues by him between the original and newly added defendants and the plaintiffs with expedition, and the object clearly was to ensure that the litigation may not be unnecessarily prolonged so as to leave it as a "semicolon" between them by leaving to the members of the C.A.C. scope for taking the stand that they were not bound by the decree passed in the appeal.

After all, Rule 8 of Order 1. C.P.C. is a rule for ensuring convenience in the trial of a lis wherein indeterminate and changing persons are involved either as plaintiffs or defendants. The uncertainty about the identity and the number of defendants as members of the C.A.C. in a dispute of the nature involved in the present case did call for the adoption of the convenient mode of suing them in a way that the decision arrived at by the court, after contest between the parties becomes binding upon the present and future members of the C.A.C. Which was contesting the plaintiffs' claim as made in the suit.

13. True, grant of leave under Rule 8 of Order 1. C.P.C. is to be followed by some procedural steps like notifying the Persons sought to be bound by the decree whether they wanted to be represented by the defendants through whom they were sought to be sued but that, by itself, would not be a sufficient ground to reject the prayer for leave under Rule 8 of Order 1. C.P.C. Ultimately, the time spent in fulfilling the requirements of law in this respect would bring about the desired result of cutting short the litigation. A prayer for leave under the rule can be sought at any stage. Generally stated there is no time limit for making an application with this prayer and leave can be sought even at the appellate stage in a suit. Moreover, as rightly pointed out by Sri Rajeshwari Prasad appearing for the applicants the plaintiffs have made the prayer at the only appropriate stage available to them when, under the orders of the Supreme Court, the members of the C.A.C. were impleaded as defendants and a written statement filed by them and a set of issues framed for decision between the parties including these members. It cannot; be overlooked that it was only after the suit had been partly decreed by the trial Court and the plaintiffs sought to execute the decree passed in their favour that the members of the Council came upon the scene actively and made an application under Order 21, Rule 97 and Order 40. Rule 1 (2). C.P.C. The plaintiffs' attempt to implead the members of the Council in their application under Order 21. Rule 32. C.P.C. to make it binding upon them failed because on a consideration of the objection raised by the members of the Council, the view taken by the executing Court was that they were not bound by the decree and that the decree itself was a nullity. That matter was brought to this Court as Execution First Appeal No. 195 of 1965 and has been taken note of by the Supreme Court in its order of October 21, 1965. The trial Judge would not have travelled outside the ambit of the order remanding the issues for trial to him if. in the circumstances of the present case, he had acceded to the request of the plaintiffs of granting leave for defence of the case by defendants Nos. 23 and 32 the President and the Secretary of the C.A.C.) in a representative capacity on behalf of the C.A.C. from this stage.

13-A. The submission that it is only this Court, where the two First Appeals are pending, or the Supreme Court, which made a direction for trial of issues on October 21, 1965, that was competent to grant the leave overlooks the fact that it was implicit in the judgment of the Supreme Court of October 21, 1965, that steps ensuring speedy end of the litigation and final determination of the controversy between the defendants originally arrayed and those subsequently

added before the Supreme Court be taken by the trial Judge to whom the issues had been remitted for trial between all these defendants and the plaintiffs. The fact that the then members of the Council were also added as defendants by the Supreme Court, when considered in the background of the object with which the Supreme Court adopted a "somewhat unusual course..... by enlarging the scope of the suit by the addition of new defendants, for such enlargement would prevent a subsequent suit by the parties so added", rules out the feasibility of an objection to leave being granted to the plaintiffs for making the defence of the suit representative in character qua the members of the C.A.C. through their President and Secretary at this stage of litigation. The trial Judge would have been perfectly justified if he had not felt any constraint in according the permission sought.

14. The submission of Sri V.P. Misra that the order of the trial Judge not being a case decided is not amenable to the jurisdiction of this Court u/s 115. C.P.C. may be disposed of by saving that qua an unregistered body, like the C.A.C. in the present case, the refusal of leave under Rule 8 of Order 1. C.P.C. robs the decision in the case of its finality so that an erroneous refusal does preclude the plaintiffs from eventually executing the decree obtained by them against the members of that body. The decision thus is not of such an interlocutory nature as to be unrelated to any substantive right of the plaintiffs. Such a decision will clearly be a case decided for purposes of Section 115. C.P.C. and, in fact, this Court actually entertained an application in revision against an order according the permission in Dr. P.K. Banerji's case noticed earlier. The Patna High Court did so in Ramjanam Singh and Others Vs. Rambaran Singh and Others, , the Madras High Court in A. Mohammad Hassan Sahib and Others Vs. The Podanur Sunnath Jamath by President C.A. Alli Sahib and Others, , while the Punjab High Court in Shiv Shankar Lal Amba Parshad Vs. Behari Lal Bansi Dhar and Others, . I have no hesitation in refusing to accept the submission of Sri V.P. Misra, in this respect.

15. On merits even the trial Judge found, and rightly so that according permission to the plaintiffs, in terms prayed for by them, would be in the interest of justice. He however, felt some difficulty in granting leave on his view that as a court entrusted with decision of specific issues remanded to it by the Supreme Court, he was incompetent to do so mere so as it might involve prolongation of proceedings due to the procedural requirement of publication of notice and if necessary grant of time for further written statements. This view, as seen above, is not in consonance with law. The refusal of the prayer of the plaintiffs, so based upon an erroneous view of law clearly amounted to a failure on the part of the trial Judge to exercise jurisdiction vested in him by law. His order, therefore, cannot be sustained.

16. In the result the revision succeeds and is allowed and the order of the trial Judge, in so far as it rejects the application of plaintiffs for leave under Order 1. Rule 8. C.P.C. is set aside. The application of the plaintiffs shall stand allowed in

the terms prayed for. Parties shall, however, bear their own costs.