
(2010) 03 AHC CK 0209
In the Allahabad High Court

Ramji Bharti alias Ram Subh

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Citation : (2010) 03 AHC CK 0209

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—The petitioner has questioned the correctness of the order of the Trial Court dated 30th January, 2009 and the order of the Revisional Court dated 22.8.2009 whereby the Substitution Application moved by the respondent No. 3 Babban Rai has been allowed and the proceedings have been directed to be concluded after substituting the heirs/legal representatives under the said order.

2. The dispute in short is in relation to the properties of a Trust at Village Sahabuddinpur, Paragana Mohamdabad, District Ghazipur. The nature of the property involved is agricultural land. One Markandey Bharti is alleged to have headed the trust. The respondent No. 3 Babban Rai is stated to have instituted a suit in the year 1963 being Original Suit No. 165 of 1963 for an injunction that the plaintiff should be extended the said relief as against the defendant Markandey Bharti for not interfering in his peaceful possession over the properties detailed in the said plaint. A copy of plaint is annexure-4 to the writ petition. It is alleged that Markandey Bharti entered into a compromise with the respondent No. 3 on 11th October, 1963 as a result whereof the suit was decreed in terms of the said compromise on 24th October, 1963.

3. The petitioner claims himself to be the son and chela of Jagdish Bharti who is stated to have succeeded to the Math and the Trust under the will executed by late Markandey Bharti.

4. The petitioner moved an application under Order IX Rule 13 in the Original

Suit No. 165 of 1963 praying for recall of the judgment and decree of the year 1963 on the ground that it was obtained by fraud and misrepresentation. The petitioner claims that Jagdish Bharti had inherited the said properties. Thereafter the petitioner is the rightful heir and that the decree obtained by the respondent No. 3 being fraudulent deserves to be recalled. The learned Single Judge (Junior Division) on 30th April, 2008 recalled the order dated 18.10.1963 as also the judgment and decree dated 24.10.1963 and directed the matter to proceed. An application for substitution was filed by the respondent No. 3, Babban Rai for bringing on record the heirs of late Markandey Bharti and the order passed on the said Substitution Application are subject matter of controversy in the present proceedings. The respondent No. 3 alleged that against the order recalling the final judgment of 1963 revision has been filed and that the order of the Trial Court dated 30.4.2008 be set aside and therefore, even though there is no necessity to carry out the substitution keeping in view the directions of the court the Substitution application was being filed. He therefore, prayed that all persons who are claiming themselves to be the heirs of Jagdish Bharti should be brought on record in order to avoid any multiplicity of proceedings. An objection to the said application was filed by the petitioner narrating the transaction of the property in relation to the Math also pending litigations in this regard. Further objection was raised with regard to the prayer of substitution of the respondent No. 4, Krishna Nand alleging himself to be the chela of Jagdish Bharti as also to the prayer of substitution of the respondent No. 5 Madhusudan Rai son of Jagdish Rai, claiming himself to be the Manager of Jagdish Bharti. The petitioner contends that Jagdish Bharti is dead but the respondent No. 5 Madhusudan Rai claiming himself to be the Manager of Jagdish Bharti. A rival contention of Krishna Nand has also been set up as chela of Jagdish Bharti. The respondent No. 5 contends that Jagdish Bharti is still alive, therefore, there is no occasion to entertain the claim of the petitioner or any other person. The said respondent No. 5 also contends that Jagdish Bharti resides at Kushinagar near Laxman Jhula and is alive till today. It is further objected by the respondent No. 5 that the petitioner is a Rajpoot (Kshatriya by caste) and, therefore, he cannot be the chela or son of Jagdish Bharti nor he can succeed to the Math. It is further indicated that in respect of the substitution of the Agricultural land the Tehsildar Mohamdabad had passed orders and the recording of the names in those proceedings is subject matter of dispute in which stay orders have been passed by this Court in writ petition No. 29510 vide order dated 25.5.2006. It is, therefore, contended by the contesting respondent that there is no error in the orders passed and the proceedings should be allowed to continue only after the appropriate heirs are brought on record.

5. The trial court proceeded to consider the aforesaid aspects of the matter and came to the conclusion that once the ex parte decree and judgment has been set aside it would be appropriate to bring on record all claimants pertaining to the heir-ship of the Math properties in order to avoid any further controversies and the same would not prejudice the rights of Ramji Bharti who himself is claiming

to be the rightful heir of Math/properties. The trial court recorded these conclusions that it would be necessary to lead evidence to find out as to who are rightful claimants and as to whether Jagdish Bharti dead or alive and for the said purpose the substitution deserves to be made.

6. The revisional court after discussing the matter threadbare having the order of the trial court and held that the course adopted by the trial court did not suffer from any legal infirmity nor did the substitution of the heirs amount to any final determination of the suit, hence, the revision deserves to be dismissed.

7. Sri Pandey, learned Counsel for the petitioner contends that the trial court and the revisional court had adopted the converse process of law and have ignored the provisions of Order 22 Rule 4 and Rule 5 while passing the orders. Sri Pandey relied on two judgments namely; Suraj Kaur Vs. Shingara Singh and Others, Punjab and Hariyana Page 341 and the case of Hazari Lal Vs. Ist Additional District Judge and Others,

8. On the strength of the decisions it is submitted that it was incumbent on the trial court to have first allowed the parties to lead evidence and determine as to who is legal heir and should have thereafter proceeded to order substitution.

9. I have considered the aforesaid submissions and the provisions indicated by the learned Counsel for the petitioner. The power to determine the question as to who is legal representative is with the court to such an determination does not finally declare a substitution heir to be the rightful claimant for the declaration which is sought. The same is always subject to evidence.

10. In the instant case the very issue as to whether the respondent No. 3 had a right to seek the injunction and the question as to whether the court could decree the suit or not would be dependent on as to who is the rightful person entitled to defend the suit properties. This essentially involves the entitlement to the contest the suit who is itself dependent on as to whether petitioner is the appropriate person contest the suit and in such a situation where the substitution of the parties have to be adjudicated then in view of the law laid down in the case of Smt. Ambalika Padhi and another Vs. Sh. Radhakrishna Padhi and others,, and the decision in the case of Mahendra Kumar Vs. Lalchand and Another, It cannot be said that the determination made by the court below to bring on record the proposed heirs and legal representatives is erroneous. Such step was necessary in order to determine the course of the suit and in order to avoid any future complications without causing any prejudice to the petitioner who is a co-defendant. The impugned orders, therefore, in my opinion do not suffer from any infirmity and the writ petition lacks merit and is accordingly dismissed.