
(2003) 11 UK CK 0003
In the Uttarakhand High Court
Case No : First Appeal No. 48 of 2002

Sardar Harwanth Singh Dhillon and Another	APPELLANT
Vs	
Sardar Harbhajan Singh and Others	RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 1 Rule 8(2), Order 23 Rule 3B, Order 43 Rule 1A, Order 43 Rule 1A(2)
Religious Endowments Act, 1863 — Section 14

Citation : (2003) 11 UK CK 0003

Hon'ble Judges : M.M. Ghildiyal, J; Irshad Hussain, J

Bench : Division Bench

Advocate : Alok Singh, for the Appellant; Sarva Sri M.C. Pandey, V.S. Ashok, Dharam Veer Bhasin, S.K. Mishra and Harjot Singh, for the Respondent

Final Decision : Allowed

Judgement

Irshad Hussain, J.—The Appellants preferred appeal u/s 96 read with Order 43 Rule 1-A of the CPC (for short "Code") against the judgment and decree dated 6-8-2002 passed by the District Judge, Udham Singh Nagar in civil suit No. 1/1999, Harbhajan Singh v. Managing Committee and Ors. The impugned judgment and decree was passed after recording the compromise (paper No. 164-A/1 to 164-A/3) which was also made part of the decree.

2. The challenge to the impugned judgment and decree is mainly on legal grounds. It is not in dispute that original suit No. 1/1999 was instituted u/s 92 of the "Code" read with Section 14 of Religious Endowment Trust Act. Suit u/s 92 of the "Code" is a representative suit and every agreement or compromise to be entered in a representative suit require compliance of the Rule 3-B of Order 23 of the "Code". The submission of the learned Counsel for the Appellants was that the compromise was unlawful as the same being filed and accepted in contravention of the said legal provision and therefore, the impugned judgment and decree passed on unlawful compromise need to be set aside.

3. Order 23 Rule 3-B of the "Code" is as follows:

3-B. No agreement or compromise to be entered in a representative suit without leave of Court.-(1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation- In this rule, "representative suit" means,-

(a) a suit u/s 91 or Section 92,

(b) a suit under Rule 8 of Order I,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.

4. From the above provision it is evident that the requirement of law in the matter of compromise to be entered in a representative suit is that the court, before granting leave to enter into compromise, shall give notice to the persons interested in the suit. As is obvious from the Explanation to the said rule a suit u/s 92 is a representative suit and therefore, the leave to file the compromise and to accept the same should have been preceded by giving notice to all the persons interested in the suit. Since the dispute pertains to famous Nanakmatha Gurudwara Sahib, a very large number of persons were interested in the outcome of the suit and therefore, notice was required to be given in such practicable manner as may have served the purpose. Mode of giving notice is provided Order-1 Rule 8(2) of the "Code" which also pertains to a suit in the representative capacity and it is provided therein that notice may be given by public advertisement. This should have been a reasonably practicable mode of giving notice to the large number of persons interested in the suit. The learned Counsel for the Respondents also did not dispute the fact that the learned trial court did not issue any notice whatsoever to the persons interested in the suit and straightaway accepted the alleged compromise and passed the impugned judgment and decree. There can be no gain saying that the same is unlawful.

5. The learned Counsel for the Respondents however questioned the maintainability of the present appeal in view of the bar created by Sub-section (3) of Section 96 of the "Code". This provision reads, that no appeal shall lie from a decree passed by the court with the consent of parties. The challenge as also argued by the learned Counsel for the Appellants has no legs to stand. The reason is that the appeal has been instituted under Order 43 Rule 1-A read with

Section 96 of the "Code" and in view of the said provision validity of the compromise can legally be questioned. Rule 1-A of Order 43 of the "Code" reads as below:

1-A. Right to challenge non-appealable orders in appeal against decrees.- (1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the Appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.

6. A bare perusal of the above provision leave no manner of doubt that in case the compromise is unlawful the same and the judgment and decree passed on it can very well be challenged by way of an appeal. The decision of the Apex Court in the matter of Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, is an authority on this point. The ratio of the reported decision is that Rule 1-A(2) of Order 43 of the "Code" gives a right to a party, who challenges the recording of compromise, to question the validity thereof while preferring an appeal against a decree. Section 96(3) of the "Code" shall not be a bar to such an appeal because Section 96(3) is applicable to cases where the factum of compromise or agreement is not in dispute. Therefore, the objection to the maintainability of the appeal has no merit.

7. For the above discussion this appeal succeeds and is to be allowed accordingly.

8. The appeal is allowed. The judgment and decree dated 6.8.2002 passed by the District Judge, Udham Singh Nagar in civil suit No. 1/1999, is set aside. The learned trial court shall decide the original suit according to law. No order as to costs.