
(2000) 07 P&H CK 0063
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2755 of 1998

Sewa Panthi Addan Shahi

APPELLANT

Vs

Sanjiv Kumar and others

RESPONDENT

Date of Decision : 11-07-2000

Acts Referred:

Citation : (2000) 4 ICC 358 : (2000) 3 LJR 375 : (2000) 3 RCR(Civil) 644

Hon'ble Judges : R.L.Anand, J

Advocate : Mr. M.S. Guglani, Advocate., Advocates for appearing Parties

Judgement

R.L. Anand, J.—This is a civil revision and has been directed against the order dated 29.10.1997 passed by the Court Civil Judge (Junior Division), Tarn Taran, which allowed the application of the respondents under Section 10 C.P.C. and stayed the proceedings of civil suit titled Sewa Panthi Addan Shahi v. Sanjiv Kumar and others. The petitioners are aggrieved by the said order, hence the present revision.

2. Some facts can be noticed in the following manner :

Sewa Panthi Addan Shahi Sabha (Regd.) (hereinafter called "Sabha") filed a suit for declaration to the effect that the plaintiffSabha is the owner in possession of the properties mentioned in the headnote of the plaint. A civil suit was instituted on 10.10.1994 against Rupesh Arora, Anoop Kumar, Smt. Pushpa Rani, M/s Kishan Chand and Sons, M/s Parkash Bros., Munshi Ram, Prem Nath Dogra and Jagan Nath, defendants. The case set up by the Sabha was that the properties mentioned in the headnote were the ownership of the Sabha and were sought to be grabbed by Sant Ram and after his death his nephew Ram Parkash, who was never appointed as Mahant by the Bhekh as required under the rules and law. In fact, the Sabha is claiming the title of the properties.

The suit was contested by the respondents on the plea that the Sabha has nothing to do with property. It appears that during the pendency of first suit the defendants had sold some of the portion of the property vide sale deed dated

9.2.1996 to defendants Sanjiv Kumar and others, as a result of which the Sabha again filed a suit for declaration on 28.9.1996 and sought a declaration that it is the owner and in possession of the properties and that the sale deed executed by the defendants is null and void and does not affect the ownership rights of the plaintiff Sabha.

One more suit was filed by the Sabha for declaration that it is owner and in possession of the properties fully described in the headnote of the plaint and this suit was instituted on 30.8.1996. At serial No. 7, the plaintiff Sabha sought a declaration with regard to the property situated Tarn Taran, District Amritsar though no specific description of the property was given.

In the suit titled Sewa Panthi Addan Shahi Sabha v. Sanjiv Kumar and others, which was instituted on 28.9.1996, the plaintiff Sabha made a mention of the properties which are situated at Tarn Taran and this time the full description of the properties at Tarn Taran have been given.

Notice of the third suit titled Sewa Panthi Addan Shahi Sabha v. Sanjiv Kumar and others was given to the defendants and an application was moved by the defendants under Section 10 C.P.C. for the stay of the suit till the pendency of the earlier suits, especially the suit titled Sewa Panthi Addan Shahi Sabha v. Kamal Kishore and others. Notice of the said application was given to the plaintiff petitioner, who filed the reply and submitted that the cause of action in the subsequent suit titled Sewa Panthi Addan Shahi Sabha v. Sanjiv Kumar and others, is totally different and the petitioner is challenging the sale deed dated 9.2.1996 which was never the subjectmatter of the earlier two suits and, therefore, the suit cannot be stayed.

The learned trial Court found favour with the contention raised by the defendant respondents and allowed the application under Section 10 C.P.C. and in this manner the present revision by the plaintiff petitioner.

3. I have heard Mr. M.S. Guglani, Advocate on behalf of the petitioner, Mr. B.N. Mahajan, Advocate on behalf of the respondent No. 1 and with their assistance have gone through the records of this case.

4. Section 10 of the C.P.C. lays down that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

5. The reading of the above would show that in order to attract the provisions of this Section subsequent Court has to see that the matter in the earlier suit is directly or substantially in issue in the suit in which the application under Section

10 C.P.C. has been moved. I have already stated the controversy between the parties. The Sabha is claiming the title of the properties on the plea that the properties including the property situated at Tarn Taran, district Amritsar are owned by Sabha and the defendants have no right, title or interest in the same, because defendant was never appointed as Mahant by the Bhekh as required under the rules and regulations. Otherwise also, the defendant could never become the owner of the properties including the property situated at Tarn Taran.

6. The counsel for the petitioner Mr. Guglani has also placed reliance upon *Karri Satyanarayana and others v. Pichika Veerraju and others*, 1996(1) Civil Court Cases 249, a judgment of Andhra Pradesh High Court, wherein it was observed that mere fact that one on the questions in issue is the same as in the other suit would not make the subject matter identical. The counsel also placed reliance on *Haji Begum Tajuddin v. Mahmood Hussain and others*, 1994(1) Civil Court Cases 99 (Bombay) and *Ram Singh v. Sohan Lal and others*, 1994(2) R.R.R. 668 : 1994(2) Civil Court Cases 364 (P&H).

7. On the contrary, Mr. Mahajan, counsel for respondent No. 1, submitted that the subject matter of the suit titled *Sewa Panthi Addan Shahi Sabha v. Sanjiv Kumar and others* is identical with the suit *Sewa Panthi Addan Shahi Sabha v. Kamal Kishore and others*. The success or nonsuccess of the suit *Sewa Panthi Addan Shahi Sabha v. Sanjiv Kumar and others* is solely dependent upon the findings of earlier two suits titled *Sewa Panthi Addan Shahi Sabha v. Kamal Kishore and others* and *Sewa Panthi Addan Shahi Sabha v. Rupesh Arora and others* and the challenge to the sale deed dated 9.2.1996 is only consequential, because the property subject matter of the sale deed is also the property subject matter of civil suit *Sewa Panthi Addan Shahi Sabha v. Kamal Kishore and others* and especially at subheading No. 7, the plaintiff Sabha sought a declaration regarding ownership of all the property situated at Tarn Taran.

8. I subscribe to the argument raised by the counsel for the respondent. The subject matter of the suit titled *Sewa Panthi Addan Shahi Sabha v. Sanjiv Kumar and others* is fully covered by the civil suit titled *Sewa Panthi Addan Shahi Sabha v. Kamal Kishore*. If in the suit titled *Sewa Panthi Addan Shahi Sabha v. Kamal Kishore and others* the Sabha is held to be the owners of the properties, all transactions of the defendants will fall on the ground because every subsequent transferee will be bound by the rule of *lis pendens*. When the defendants will not be able to show their right, title or interest in the property, the subsequent transferee will not be able to get anything. For the purpose of Section 10 C.P.C. if the subject matters of the suits are identical, the subsequent proceedings have to be stayed. We have to see the substance of the case. It is true that in the suit titled *Sewa Panthi Addan Shahi Sabha v. Sanjiv Kumar and others*, the plaintiff Sabha has given challenge to the sale deed dated 9.2.1996, but the relief is totally dependent upon the relief in the suits *Sewa Panthi Addan Shahi Sabha v. Rupesh Arora and others* and *Sewa Panthi Addan Shahi Sabha v. Kamal Kishore and others*.

9. In these circumstances, the trial Court has rightly stayed the proceedings of civil suit titled Sewa Panthi Addan Shahi Sabha v. Sanjiv Kumar and others till the pendency of the suit titled Sewa Panthi Addan Shahi Sabha v. Kamal Kishore and others. The case law which has been relied upon by the learned counsel for the petitioner does not advance his case, as, in the opinion of this court, the ingredients of Section 10 are fully attracted in this case. Resultantly, I find no merit in this revision and the same is hereby dismissed.

10. Nothing stated above shall amount to an expression of my opinion on the merits of the case.

Both the parties are directed to appear before the trial Court and directions are given to the trial Court to dispose of the suit titled Sewa Panthi Addan Shahi Sabha v. Rupesh Arora and Sewa Panthi Addan Shahi Sabha v. Kamal Kishore and others within six months from the receipt of the copy of the order.

Revision dismissed.