

(1955) 03 SC CK 0008
In the Supreme Court Of India
Case No : Appeal (civil) 11 of 1954

Shiromani Gurdwara Parbandhak Committee and Others	APPELLANT
Vs	
Raja Shiv Rattan Dev Singh and Others	RESPONDENT

Date of Decision : 24-03-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 133
Sikh Gurdwaras Act, 1925 — Section 14, 16, 29(2), 32

Citation : AIR 1955 SC 576

Hon'ble Judges : B. K. Mukherjea, C.J; Vivian Bose, J; T. L. Venkatarama Aiyar, J; S. B. Sinha, J; B. Jagannadhadas, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

Jagannadhadas, J.—This is an appeal from the judgment of the High Court of Punjab by leave granted under Article 133 of the Constitution read with Sections 109 and 110 and Order 45, Rule 2 Civil P. C. The appeal arises out of a suit filed in 1938 by the respondent herein, Raja Shiv Rattan Dev Singh, Raja of Poonch against (1) Shiromani Gurdwara Parbandhak Committee, Amritsar, (2) Local Gurdwara Parbandhak Committee of Sri Darbar Sahib, Amritsar, and (3) 57 Sikhs, for a declaration to the effect that a house known as Bunga Raja Dhian Singh in Amritsar and four shops appurtenant thereto, two of which are close to the Sikh Gurdwara, Sri Darbar Sahib, belong to him and are his private property and that they are not a Sikh Gurdwara.

The suit which was filed in 1938 was dismissed by the trial Court on certain preliminary issues and that dismissal was reversed on first appeal and the suit was remanded. On second appeal therefrom to the High Court the dismissal by the trial court was restored by a Single Judge in 1941. Against this there was a Letters Patent Appeal to a Bench.

That appeal was first heard by a Bench which, after hearing the matter and

coming to some tentative conclusions, on the points raised before them, made an order dated 16-6-1941, adjourning the hearing of the appeal to a later date for reasons set out therein. For one reason or other this appeal could not be taken up for a considerable time. It ultimately came up for final disposal before a Bench of the High Court in the year 1950.

The learned Judges, by their judgment dated 20-6-1950, gave certain findings on the preliminary issues raised and as a result thereof reversed the judgment of the Single Judge of the High Court, allowed the appeal and returned the case back to, the trial Court "for proceeding in accordance! with law". It is against this order of the High Court that the present appeal has been brought to this Court.

2. A preliminary objection has been raised before us at the outset that this appeal is incompetent and that the provisions under which leave was granted by the High Court were inapplicable to the case, inasmuch as the order of the High Court appealed against is not a final order within the meaning of Article 133 of the Constitution.

It may also be mentioned that at the conclusion of the hearing, the learned Attorney-General mentioned to us that, since the passing of the order of the High Court in 1950 returning the case for further disposal, the trial Court has disposed of the case, there having been no stay and that the suit has since been decreed in favour of the present respondent and that inasmuch as no appeal has been filed against that decree, this is an additional ground by reason of which the appeal is incompetent.

A certified copy of the judgment of the trial Court on remand has been since placed before us and we have heard further arguments on this preliminary objection in the light thereof. This will be dealt with at the end of this judgment.

3. The present litigation arises out of certain events relating to the suit property which arose, out of the provisions of the AIR 1933 1041 (Lahore) 1925, (Punjab Act VIII of 1925) (hereinafter referred to as the Act). The Act came into force on 1-11-1925. u/s 3(2) of the Act, the Provincial Government issued a notification on 13-12-1927, with reference to a claim made and list forwarded to the Government u/s 3(1) alleging that the suit properties belong to the Sikh Gurdwara, Harmandir Sahib (Darbar Sahib).

Three persons including the present respondent filed objections thereto u/s 5(1) of the. Act, each claiming the properties as his own. The objections of the other two, viz., Nikka Singh and Suchat Singh were, in course of time, either withdrawn or ultimately dismissed. The objection by the respondent, Raja of Pooneh, came up for consideration before the Sikh Gurdwara Tribunal, constituted under the Act. There was a compromise between the Raja and the Local Committee of the Gurdwara and as a result thereof a decree was passed by the Gurdwara Tribunal on 17-6-1933, in terms of the compromise.

The substance of that compromise was that the property (Bunga and the shops)

were admitted to be the property of the Raja, but that the Bunga, excluding the shops would be a waqf for the use of the pilgrims to the Darbar Sahib, that the income from the shops would be spent in the interests of the Bunga, that the management of the Bunga would be with the Local Gurdwara Parbandhak Committee subject to the previous eon-sent, in writing, of the Raja and subject also to the general advice and directions of the Raja, that the letting out of the shops and the ejectment of the tenants therein would rest with the Raja and that the income from the shops would be made available for the expenses of the Bunga.

It may be mentioned here that a Bunga is "a hostel where pilgrims, coming from various parts of India, to pay a visit to the Golden Temple, stay". (See -- AIR 1933 1041 (Lahore) , quoting from -- 'Mehr Singh v. Sochet Singh', AIR 1916 Lah 98. It may be noticed that in the above proceedings the suit properties were claimed only as properties belonging to the main Gurdwara Darbar Sahib and not as by themselves constituting a Sikh Gurdwara and that the claim was compromised by admitting the title of the Raja but with an arrangement that the same should be held for the benefit of the pilgrims to the Darbar Sahib.

Quite apart, however, from these proceedings, there appear to; have been certain prior proceedings u/s 7 of the Act initiated on an application by 57 Sikhs dated 24-10-1926, claiming these very properties as by themselves constituting a Sikh Gurdwara. The Government issued a notification dated 23-7-1929, u/s 7(3) of the Act. In the list attached to the application u/s 7(1) with reference to the provisions of Section 7(3) of the Act, the property was shown as being in possession of the Shiromani Gurdwara Parbandhak Committee, Amritsar.

Therefore, apart from the general notification, there does not appear to have been any service of individual notices under the provisions of Section 7(4) of the Act. Objections, however, were filed u/s 10 of the Act, by the two persons Nikka Singh and Suchet Singh, who had previously filed objections to the notification u/s 3(1). Both these objections appear to have been ultimately dismissed for default or non-prosecution more or less in the same way as their prior objections u/s 5(1). The Raja--the present plaintiff filed no objection u/s 10 claiming the alleged Gurdwara as his private property. This was presumably because he had no specific notice of this claim u/s 7.

There was no objection filed to the notification u/s 8 by any person. Notwithstanding the absence of any such objection no. notification u/s 9 was issued by the Government. It may be mentioned that from the date of the compromise in 1933 up to some time in the year 1937-1938, the compromise appears to have been acted upon smoothly between the parties. It is stated, however, that some trouble, arose between them, as a result of which probably, the Shiromani Gurdwara Parbandhak Committee moved the Provincial Government for issuing notification u/s 9 of the Act.

On 5-7-1938, the Provincial Government wrote a letter to the Raja asking" him if

he had any objection to the notification u/s 9 of the Act declaring the suit properties as a Sikh Gurdwara. The Raja strongly objected to any such notification being issued. Thereupon the Government refrained from issuing any notification u/s 9 of the Act and referred the Raja to the Civil Court on 2-11-1938. That is the genesis of the suit out of which the present appeal arises.

4. The trial Court framed four preliminary issues as follows :

"1. Is the plaintiff in possession of the property in suit other than the shops?

2. If this is not proved, can the suit proceed in the present form with respect to the above property?

3. Has not this Court jurisdiction to try the suit?

4. Is the suit barred by time?" On issues Nos. 1 and 2, the Court held that a suit for declaration with regard to the property in dispute at the instance of the plaintiff was maintainable. But it decided issues Nos. 3 and 4 against the plaintiff and accordingly dismissed the suit. The first appellate Court, while maintaining the finding of the trial Court, on issues Nos. 1 and 2, held in favour of the plaintiff also on issues Nos. 3 and 4 and consequently remanded the case to the trial Court for proceeding according to law and disposing of the case on its merits.

As already stated, the appeal to the High Court was in two stages, first before a single Judge and thereupon by way of appeal under the Letters Patent. The findings in favour of the plaintiff so far as issues Nos. 1, 2 and 4 are concerned do not appear to have been contested any further in the High Court. The controversy was confined to the question of jurisdiction raised in issue No. 3. It may be mentioned that at the hearing of the Letters Patent Appeal in the High Court by the Bench who heard it for the second time, i.e., in the year 1950, a question appears to have been raised that on account of the death of one of the respondents during the pendency of the appeal and on account of his legal representatives not having been brought on the record, the appeal must be taken to have abated as against all the respondents. This contention was overruled by the High Court.

That question has no longer been canvassed before us. The only substantial question, therefore, before the High Court was the question of jurisdiction raised in issue No. 3. To appreciate the contentions on either side relating to the question of jurisdiction in this appeal it is necessary briefly to notice the scheme of the Act.

5. As its preamble shows, the Act was meant to provide for the better administration of certain Sikh Gurdwaras and for inquiries into matters and settlement of disputes connected therewith. Part III of the Act makes elaborate provisions for the control and administration of Sikh Gurdwaras through a Central Board, a Judicial Commission, and various Local Committees to be constituted in accordance with the provisions of that part.

Under Section 41 of the Act the management of every Notified Sikh Gurdwara is to be administered by the Committee constituted therefore, the Board and the Commission in accordance with the provisions of the Act. A Notified Sikh Gurdwara is defined as meaning any Gurdwara declared by Notification of the Provincial Government, under the provisions of the Act, to be a Sikh Gurdwara. The provisions relating to the notification and the machinery for settlement of disputes preliminary to such Notification are found in Part I.

The provisions in Part I are based on a legislative classification of Gurdwaras contained in Schedules I and II of the Act. The Gurdwaras enumerated in Schedule I are all of them Sikh Gurdwaras. Schedule II enumerates certain institutions which are not Sikh Gurdwaras. Sections 3 to 6 of the Act relate to Gurdwaras in Sch. I. Section 3(1) provides that any Sikh or any present office-holder of a Gurdwaras specified in Sch. I may forward to the Provincial Government within ninety days from the commencement of the Act, a list of properties claimed to belong to the said Gurdwara situated in Punjab, inclusive of the Gurdwara, and the names of the persons in possession thereof.

Section 3(2) provides that on receiving any list the Provincial Government shall publish a notification that the Gurdwara to which it relates is a Sikh Gurdwara and shall also later on publish a consolidated list showing the properties mentioned in the various lists that may be received under Sub-section (1). Sub-section (3) of Section 3 provides for notice of the claim, as appears from the consolidated list, to such of the persons named therein as being in possession.

On the publication of the notification and of the consolidated list under Sub-section (2), the provisions of Part III relating to administration are applied with effect from the date of the publication. Now Section 5 provides that on the publication of a notifications of Section 3(2) and within ninety days thereafter any person claiming a right, title or interest in any property included in the consolidated list except a right, title or interest in the Gurdwara itself may forward a petition to the Provincial Government.

Where, no such claim is received u/s 5(1), then the Provincial Government is enjoined under Sub-section (3) of Section 5, to publish as soon as it may be, after the expiry of the prescribed period for making a claim, a notification specifying the right, title or interest in any properties in respect of which no such claim has been made. It is also provided that the publication of the notification shall be conclusive proof of the fact that no such claim was made in respect of any right, title or interest specified in the notification. Section 6 refers to claim for compensation by hereditary office-holders in respect of a Sikh- Gurdwara notified as above.

6. The next group of sections, i.e., sections 7 to 11 of the Act relate to Gurdwaras (alleged as such) other than those enumerated in Sch. I and II. Section 7 provides that any 50 worshippers of a Gurdwara may forward an application to the Provincial Government claiming that it is a Sikh Gurdwara.

Such a petition should be accompanied by a list showing all the properties belonging thereto including (the item of property which constitutes) the Gurdwara.

On receipt of such an application, the Provincial Government has u/s 7(3) to publish the same along with the accompanying list by a notification and has also to give notice to the parties concerned. On the publication of such a notification three different kinds of claims may be forwarded to the Provincial Government, (a) under Section 8 by any hereditary office-holder of the Gurdwara or any 20 or more worshippers of the Gurdwara objecting that the Gurdwara is not a Sikh Gurdwara. (b) u/s 10 by any person claiming his own right, title to, or interest in any item of property in the list published.

(c) u/s 11 by any past or present hereditary office-holder of the Gurdwara claiming- compensation for loss suffered or to be suffered. Section 9 provides that if, after a notification u/s 7(3) is published, no petition is received within ninety days thereof u/s 8 objecting to its being declared a Sikh Gurdwara, the Provincial Government shall, after the expiration of the prescribed period, publish a notification declaring the Gurdwara to be a Sikh Gurdwara. The machinery for the determination of the various claims arising with reference to Section 3 to 11 is provided in Section 12 and 14.

Section 12 provides that for the purpose of deciding all the claims made in accordance with the above mentioned provisions of the Act, the Provincial Government may from time to time constitute one or more Tribunals. Section 14 enjoins that the Provincial Government shall forward to a Tribunal all petitions received by it under the provisions of Section 5, 6, 8, 10 or 11 and that the Tribunal shall dispose of such petitions, by order, in accordance with the provisions of the Act.

Thus it may be seen that these sections in Part-I taken with Schedules I and II of the Act provide broadly for (1) determination and notification of what are Sikh Gurdwaras, (2) determination of what are the properties which belong to, each of these Sikh Gurdwaras, (3) determination of compensation for office-holders of such Gurdwaras for loss they may sustain on the notification of the Gurdwaras as Sikh Gurdwaras, and (4) setting up of Tribunals for the disposal of various claims relating to the above disputes.

Section 34 provides for an appeal to the High Court from the determination by a Tribunal. Sections 29, 30, 31 and 37 indicate the demarcation of jurisdiction relating to these disputes as between the Tribunals under the Act and the ordinary Civil Courts. These sections will be noticed presently.

7. Now the question of jurisdiction in this case arises as follows. The argument on behalf of the appellant is that the claim to the suit property made by the plaintiff in this suit could and should have been put forward as an objection u/s 10 of the Act and that such a question is within the exclusive jurisdiction of the Sikh Gurdwara Tribunal. For the respondent it is contended that no such claim

could have been maintained u/s 10 of the Act and that Section 7 to 11 proceed on a basic assumption that there is a Gurdwara in respect of which claims as to its character are allowed to be put forward and objections as to what properties belong to it are admissible.

It is urged that the determination of the correctness of that basic assumption is not within the scope of decision by a Gurdwara Tribunal and that the question as to whether a certain item of property is the private property of a person or by itself constitutes a Gurdwara at all is one to be decided by the Civil Court, when the question is raised. We have heard elaborate arguments on these questions and have had the benefit of the views expressed by the learned Judges of the High Court in their respective judgments in this case.

The decision of the questions thus raised is not altogether easy in view of the rather involved and defective drafting of the relevant sections of the Act. After giving our best consideration, we feel it unnecessary and undesirable to express any opinion on the questions so raised. In our view on the facts of this case, the decision of this appeal can be rested on narrower grounds.

8. Assuming without deciding that the contention put forward on behalf of the appellant is correct, viz., that the claim of the plaintiff in the present case is one that should have been put forward u/s 10, this does not by itself conclude the question of jurisdiction. The exclusion of the jurisdiction of the Civil Court in respect of such a claim must be brought about by some specific provisions in the Act. The provision that has been relied on in this behalf is Section 29 which is as follows:

"29. Notwithstanding anything contained in any other law or enactment for the time being in force no suit shall be instituted and no Court shall entertain or continue any suit or proceeding in so far as such suit or proceeding involves--

(1) any claim to, or prayer for the restoration of any person to an office in a Notified Sikh Gurdwara or any prayer for the restoration or establishment of any system of management of a Notified Sikh Gurdwara other than a system of management established under the provisions of Part III;

(2) any claim to, or prayer for the restoration of any person to an office in or any prayer for the restoration or establishment of any system of management of, any Gurdwara in respect of which a notification has been published in accordance with the provisions of Sub-section (3) of Section 7 unless and until it has been decided under the provisions of Section 16 that such Gurdwara should not be declared to be a Sikh Gurdwara".

Section 29 (1) has obviously no application since the disputed property in this case has not been notified u/s 9 of the Act and is not a "Notified Sikh Gurdwara" within the meaning of the Act. This is not disputed. It is pointed out that it is Section 29(2) which applies to the case since a notification u/s 7(3) has been published in respect of this alleged Sikh Gurdwara. It is urged that this sub-

section applies to (and hence bars the cognizance of the Civil Court as regards) "any claim to.....any (such) Gurdwara".

On the construction of Section 29(2) the learned Judges of the High Court have, in these proceedings, expressed different views. Justice Abdul Rashid has accepted a reading of this section which supports the appellant's contention. Justice Kapur has adopted a different reading and has negated the contention. It is not necessary for our purpose to resolve even this limited conflict of views.

Whichever reading is accepted as correct, the only result that follows under this sub-section is that the Court shall not "entertain the claim or continue the suit unless and until it has been decided under the provisions of section 16 that such Gurdwara should not be- declared to be a Sikh Gurdwara", The reference to Section 16 in the clause underlined above (here in ' ') is obviously to a proceeding before a Sikh Gurdwara Tribunal in which the limited issue as to whether the Gurdwara is or is not a Sikh Gurdwara has got to be decided as a preliminary issue by virtue of Section 16.

Now the only provisions in the Act under which any proceeding which may involve the determination of the above issue can come up before the Tribunal are Sections 14 and 32. (It may be noted that the only other sections under which a Tribunal gets any seisin of any other proceeding are Sections 19, 20, 21 and 27 but they have no relevance to the, present case). Hence the clause "unless and until it has been decided under the provisions of Section 16 that such Gurdwara should not be declared a Sikh Gurdwara" appears clearly to apply to a situation where proceedings involving the determination of the issue of "Gurdwara or Sikh Gurdwara" come up before the Tribunal by virtue of Section 14 or Section 32.

But, on the facts of the present case, the situation is one to which neither Section 32 nor Section 14 can apply. Section 32 does not apply since the alleged Gurdwara has not been notified u/s 9 and is not a "Notified Sikh Gurdwara". Section 14 does not apply because there is no petition u/s 10 which has been or should have been sent up to the Tribunal. If, therefore, as contended for on behalf of the appellant, Section 29(2) be held to apply to the present case, it will at best lead to the anomalous situation of the exercise of the Civil Court's jurisdiction being barred or stayed indefinitely, and interminably.

It is to be noticed that the language in Section 29 viz., "no court shall entertain or continue any suit or proceeding" is not of adequate amplitude to effectively exclude the jurisdiction of the Court but that it only prohibits its exercise "unless and until" a specified issue is decided u/s 16 (presumably by the Tribunal). The effect of Section 29(2) being, not to exclude jurisdiction, but to operate only as a limited stay until a specific issue is determined by the Tribunal, we cannot hold that it applies to a case like the present one where there is no scope for the determination of such an issue by the Tribunal under the prescribed machinery of the Act, with reference to the situation that has transpired in the case.

The exclusion of jurisdiction of the Civil Court in respect of a suit or an issue

which is normally within its competence can be brought about only by clear and unambiguous language or by the necessary implication thereof.

9. It is desirable to notice, in passing, two other sections in the Act, viz., Sections 30 and 31 in this connection, though they have not been in terms relied upon as bringing about a bar of the jurisdiction of the Civil Court in this case. It is sufficient to say that Section 30 has no application because the present case does not relate to a "Notified Sikh Gurdwara" and that Section 31(2) which might possibly be contended to apply, can also have no application for the same reasons which have been mentioned above in considering Section 29(2).

10. In our opinion, therefore, the jurisdiction of the Civil Court in respect of the issues that arise for determination in this case is not barred by any of the provisions of the Act.

11. The learned Judges of the High Court in the judgment under appeal have recorded the following conclusions towards the close of their judgment.

"1. That unless the institution is a Gurdwara no claim can be made u/s 7(1) by 50 Sikh worshippers, and no notification can issue;

2. That in this case the notification of 23-7-1929, u/s 7(1) was inconsistent with the claim made and published in the notification u/s 3(2) dated 13-12-1927;

3. That as a result of a previous adjudication dated 17-6-1933, the building in dispute in the present case is neither a Gurdwara nor a Sikh Gurdwara but merely private property of the plaintiff; and

4. That neither Section 29 nor Section 31 of the Act is a bar to the jurisdiction of the Civil Court, and that if Section 29 bars any claim to a Gurdwara, then the necessary consequence of this finding will be that there will be no Court competent to try the question whether a particular institution is or is not a Gurdwara".

We have expressed our opinion about item No, 4 above agreeing with the conclusion stated, though not for the same reasons, which have appealed to the learned Judges. So far as the conclusion Nos. 1 and 2 are concerned they have a bearing . only on the question whether the proceedings initiated u/s 7 of the Act in the present case are valid so as to bring about the application of Section 10 to the plaintiff's claim and the exclusion of the jurisdiction of the Civil Court consequent thereupon, in respect of that claim.

In the view we have taken on the question of jurisdiction, while leaving the applicability of Section 10 open, it is unnecessary to express any opinion on the questions involved in conclusions Nos. 1 and 2 recorded by the High Court and they are accordingly vacated. Conclusion No. 3 remains to be considered and it is based on Section 37 of the Act. In view of the course we are proposing to adopt, it is unnecessary to deal at this stage with the effect of Section 37 on this case with reference to the previous history.

All that we need say at present is that the learned Judges, Laving remanded the suit and certain issues of fact on the merits still remaining to be determined, should not have virtually concluded the decision of the suit by a finding of the nature which they have recorded. We accordingly vacate also conclusion No. 3 of the learned Judges and leave it open for further consideration.

12. As has been stated at the outset, the suit has been disposed of in the Courts below only on the preliminary issues. The only one of the preliminary issues which survived up to this stage was the one relating to jurisdiction. We have now held finally that, on the facts of this case, the Civil Court has the jurisdiction to entertain the suit which has been instituted and to decide the material issues raised therein.

On the pleadings in this case the two questions on the merits that arise are (1) Is the compromise decree dated 17-6-1933 of the Sikh Gurdwara Tribunal in the proceedings arising out of the claim of the plaintiff u/s 5 of the Act, binding as between the parties to the present suit? (2) If not, do the properties in the suit belong to the plaintiff as claimed by him? We consider it necessary and desirable to call for findings from the trial Court on these two issues before finally disposing of this appeal.

13. The question that remains for further consideration is as to the maintainability of this appeal before us on the certificate granted by the High Court. As has been stated, at the outset, this has been raised as a preliminary objection. The High Court granted the certificate under Sections 109 and 110 and Order 45, Rule 2, Civil P. C., read with Article 133 of the Constitution.

The question raised is that since what all the High Court did was to remand the suit to the trial Court for proceeding in accordance with law, there is no final order within the meaning of the above provisions against which a certificate could be granted by the High Court. The learned Judges have considered the matter and have pointed out that though the order purports to be by way of a remand they did in fact finally decide the matter. They say as follows :

"It was finally decided that the building in dispute was merely a private property and it was neither a Gurdwara nor a Sikh Gurdwara and that no claim could be made by the 56 worshippers merely because it was a Gurdwara and that the notification of 1929 was inconsistent with the notification u/s 3 of 1927. The decision on these three points finally determines the rights of the parties in regard to the ownership of the property.

If it is private property, as it has been held by this Court, then a declaration must be given as prayed for by the plaintiff and as a consequence the injunction will follow".

In fact this was the very view of the effect of that order which has been taken by the trial Court after remand. In deference to this views the trial Court did nothing except passing a decree in terms of this order. There is, therefore, no substance

in the preliminary objection. On the facts of this case the judgment of the High Court appealed against does amount to a final order.

But it is further urged that since a decree has already followed upon this remand in favour of the plaintiff and since no appeal has been filed as against the decree so passed, that determination has now become conclusive and prevents us from dealing with this appeal and setting aside or modifying the judgment of the High Court and making a fresh remand to that Court ourselves. We are not able to accept this contention in the circumstances of this case.

The application to the High Court for leave to appeal was filed on 23-9-1950 and leave was granted on 18-7-1952. The decree of the trial Court after remand was passed, in between, on 4-12-1951. The decree must, in the circumstances, be taken to be subject to the result of this appeal. In our opinion this case falls within the principle recognised by the Privy Council in --'Shama Purshad v. Hurro Purshad', 10 Moo Ind App 203 (PC), and not that in -- 'Nanganna Naidu v. Venkatapayya', AIR 1923 PC .167.

14. We accordingly direct the trial Court to take such further evidence as may be necessary and submit to this Court its findings on the two issues above stated within three months from the date of receipt of the records by that court. On receipt of the finding in this Court it will be open to either side to, file objections thereto within ten days therefrom and this appeal will be thereafter posted for final disposal.