
(1982) 08 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3054 of 1981

Shri Dhanwantry Education Society (Registered)	APPELLANT
Vs	
Dr. Jawahar Lal	RESPONDENT

Date of Decision : 20-08-1982

Acts Referred:

Societies Registration Act, 1860 — Section 6

Citation : (1982) 08 P&H CK 0010

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Advocate : S.K. Aggarwal, for the Appellant;

Final Decision : Allowed

Judgement

J.M. Tandon, J.—Dr. Jawahar Lal respondent filed a suit for permanent injunction against Shri Dhanwantry Education Society (Registered), Chandigarh (hereafter "the Society") through its Secretary (J.S. Kapoor), alleging that he became a life member of the petitioner-Society on payment of Rs. 1100/- on 22nd September, 1980. The elections of the Society were held in June, 1980 and the office bearers are entitled to hold office for a period of three years till June, 1983. The Society is holding meetings without issuing notice to him. He has a right to attend the meetings. He prayed that the Society be directed to send him the intimation of the meetings, so that he may attend the same and further be restrained from holding elections before June, 1983. This suit was filed on 15th April, 1981. J.P. Kapoor, Secretary of the Society, put in appearance before the trial Court on 16th April, 1981 and submitted a written statement on behalf of the Society, conceding the claim of the respondent. The Society, having learnt about the suit, filed a petition before the trial Court on 27th April, 1981 through R.D. Gupta, that the power of attorney executed by J.P. Kapoor on behalf of the Society in favour of Mr. J.C. Sharp a, Advocate, may be cancelled because he was not so authorised by the Society by means of a resolution. The trial Court dismissed this application filed by the Society vide order dated 11th June, 1981, against which

the present revision is directed.

2. Notice was issued to Dr. Jawahar Lal, who has not put in appearance in spite of service.

3. The learned counsel for the petitioner-Society has contended that J.P. Kapoor was the Secretary of the Society. A meeting of the Society was fixed for 20th April, 1981 for election of office bearers including the Secretary. According to the understanding between the existing office holders, J.P. Kapoor was to tender his resignation. J.P. Kapoor did tender the resignation on 20th April, 1981 and the same was accepted on that very date. On 15th April, 1981, the respondent filed a suit for permanent injunction. It was got filed by J.P. Kapoor. On 16th April, 1981 J.P. Kapoor put in appearance before the trial Court and submitted the written statement on behalf of the Society, admitting the claim of the respondent. J.P. Kapoor also appointed Mr. J.C. Sharma, Advocate, to represent the Society. J.P. Kapoor at no stage was authorised to appoint Mr. J.C. Sharma as counsel for the Society or put in written statement conceding the claim of the respondent. Mr. J.C. Sharma, therefore, cannot represent the Society and further the written statement already filed by J.P. Kapoor cannot be treated as one filed by the Society.

4. Section 6 of the Societies Registration Act, 1860 (hereafter "the Act") reads:--

6. Suits by and against societies:--Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal, secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion:

Provided that it shall be competent for any person having a claim or demand against the society, to use the president or chairman, or principal, secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

The learned counsel for the petitioner has contended that the petitioner Society has no rules and regulations, with the result that it was for the governing body of the Society to determine the person who will defend the suit filed by the respondent. The governing body did not take a decision in this regard. J.P. Kapoor though a Secretary of the Society, was not authorised to act on behalf of the Society to submit written statement or to appoint Mr. J.C. Sharma, Advocate. The action of J.P. Kapoor in the matter of appointment of Mr. J.C. Sharma, Advocate, to represent the Society in the suit filed by the respondent as also to file written statement conceding the claim of the respondent, is not binding on the Society, being violative of Section 6 of the Act.

5. Chapter 16-A of the Rules and Orders of the Punjab High Court. Volume-I, deals with Legal Practitioners. It is provided there in that when power of attorney in favour of a lawyer is not executed by the principal himself but by some person

claiming to appoint or give authority on his behalf, the lawyer will not be recognised by the court without proof that such person was duly authorised by the principal to execute such power of attorney. In the absence of a resolution of the petitioner-Society to appoint Mr. J.C. Sharma, Advocate, the latter could not be recognised by the trial Court as a lawyer competent to represent the Society.

6. The relevant part of Order III Rule-4. Code of Civil Procedure, reads:

4 (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of- attorney to make such appointment.

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J.P. Kapoor was not authorised to appoint Mr. J.C. Sharma, Advocate, on behalf of the Society. Mr. J.C. Sharma, therefore, could not represent the Society in view of the provisions contained in Order III Rule 4(1), Code of Civil Procedure, reproduced above.

7. In view of the discussion above, the revision is accepted and the impugned order of the trial Court dated 11th June, 1981 set aside. The written statement already filed by J.P. Kapoor, admitting the claim of the respondent, having been filed by an unauthorised person, will not be binding on the Society. J.P. Kapoor was not authorised to appoint Mr. J.C. Sharma, Advocate, to represent the Society. The trial Court will, therefore, not recognise Mr. J.C. Sharma, Advocate, as counsel for the Society. No order as to costs.