
(2009) 05 J&K CK 0026
In the Jammu And Kashmir High Court

Shri Panch Dashnaam Zoonaa Akhara and Others	APPELLANT
Vs	
Ashok Gupta and Another	RESPONDENT

Date of Decision : 22-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2009) 05 J&K CK 0026

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Judgement

Muzaffar Hussain Attar, J.—Position of Mahant, pivotal in the affairs of temple, is catapulted to centre stage in these proceedings.

2. Order dated 30.5.2007 passed by the learned Principal District Judge, Jammu is under challenge in this Civil First Miscellaneous Appeal.

3. The facts of the case are briefly summarized as under:

The appellants-plaintiffs instituted a civil original suit against the respondents-defendants in the Court of learned Principal District Judge, Jammu,

praying therein that a decree for permanent prohibitory injunction be passed restraining the respondents-defendants from interfering in the

management, superintendence, administration of the affairs and activities of the appellants- plaintiffs in respect to all types of religious activities

conducted as per the By-laws, Constitution, Rules, Vidhaan, Niyam etc. of appellants 1 & 2 with respect to Shivalaya Mandir, Dashnaami

Akhara, Panjbhaktar, Jammu, a Sanyasi Muth, commonly known as bdecree for permanent prohibitory injunction was sought to restrain the

respondents-defendants from causing any type of interference in the rights of appellant-plaintiff No. 3 as a Mahant of the temple in any manner and

to adhere to the mandate of resolution dated 14.4.2007 passed by appellants-plaintiffs 1 & 2. Further a prayer was made for issuance of a decree

of mandatory injunction against the respondents-defendants directing them to pay obeisance and offer prayers as per the time table already fixed

by late Mahant Shri Parshu Ram Giri and subsequently by appellants-plaintiffs 1 & 3 and to abide by the tenets of Shri Panch Dashnaam Zoonaa

Akhara as a usual and general worshipers of the temple; with a further direction to them to remove all types of hindrances, obstructions,

unbecoming activities and anti-akhara or anti-religious activities.

4. In the plaint the appellants-plaintiffs claim that appellant No. 1 is a registered Society with the name and style of Shri Panch Dashnaam Zoonaa

Akhara registered with the Joint Registrar of Stock Companies and Co-operative Societies, Lucknow (for short bAkhara has its own Constitution

and Rules known as Shri Panch Dashnaam Zoonaa Akhara ka Memorandum tatha uskay Parbandh Kay Sanshodit Niyam. It is further pleaded that

appellant No. 2 is also a juristic person like appellant No. 1 and can sue as well as can be sued. The appellant No. 2 is a registered Society with

the name and style of Saadhoo Dharam-Sthan Surakshini Samitee, Jammu and Kashmir bearing No. 16 of 2006 Bk. Svt. (for short, bfunctioning

of appellant No. 2 is claimed to be governed by its Vidhan and Niyams, copies whereof have been enclosed with the plaint. The sheet-anchor of

the case of appellants-plaintiffs is that the Akhara and Samiti is the final authority as far as Sanyasi Maths are concerned. The area of operation,

management, administration etc. of appellant No. 1 extends to whole of India and beyond its territories as well. Appellant No. 2 confines its

religious activities within the territories of the State of J&K and all practices, functions and duties are being performed by the appellants as per their

Constitution, By-laws, usages, rules, customs etc. so as to achieve and fulfil their respective aims and objectives and to continue with the practice

of religion started from time immemorial. It is further pleaded by the appellants in the suit that it is their exclusive domain to nominate, elect and

appoint the successors of the Asthans, Maths, Temples, Pathshalas, Dharamshalas or any other religious place, by whatever name it is called, and

in whatever shape they exist, as the case may be.

5. The specific case of the appellants is that they follow the Sanyasi Math, who

worship Lord Shiva, whereas the respondents are called the Bairagees, who worship Lord Vishnu. It is further pleaded that after the death of a Mahant, the successor Mahant, who is the disciple (chela) of deceased Mahant is appointed and coronated strictly in accordance with rules, niams, etc. of the Sanyasi Math, which originates from Shri Panch Dashnam Zoonaa Akhara. All the necessary details have been given in the plaint to project the case of appellants that the temple was established on the Samadhi of Naga Sanyasi and handed over to Sanyasi Aashram Akhara by the then rulers of the Jammu & Kashmir State and the same has also been reflected in the concerned list and the entry appears at Sr. No. 39 of the Gazette, to substantiate their plea that the temple is the part of Shri Panch Dashnaam Zoonaa Akhara and appellant No. 1 is the sole manager, administrator, sanchalak of the Asthan and the Mahants of Asthan Zoonaa Akhara are from bprojected in para-9 of the plaint. In the plaint it is further pleaded that appellant No. 3 was appointed and coronated as Mahant of the temple in accordance with the niams and rules of the Sanyasi Math on 14.4.2007.

6. Along with the suit, an interim application under Order 39 Rules 1 & 2 read with Section 151 CPC for grant of temporary injunction was also filed, praying therein to restrain the non-applicants from interfering in the affairs of the temple and properties attached thereto, as also from claiming the rights of Mahantship over the said temple. Further relief was also sought that respondents-defendants be restrained from creating unhealthy atmosphere in any manner in the temple.

7. The respondents appeared before the learned trial court and filed their written statement specifically denying and controverting all the pleas taken by the appellants-plaintiffs, except admitting that the appellants have limited role to supervise the function of coronation of the Mahant according to religious ceremonies. It is specifically pleaded in the written statement that it is the disciple (chela) who succeeds the deceased Mahant and is appointed and coronated as Mahant of the temple in terms of old age rule of succession, which is evident from the revenue record.

It is further pleaded that respondent No. 2 was installed and coronated as Mahant of the temple on 14.4.2007 in accordance with the religious rites. It is further stated that the said ceremony was witnessed by Mahant Phool

Giri Ji of Ramban and the entire event has been photographed/videographed. It has been specifically denied that the temple belongs to Panch Dashnami Zoonaa Akhara. The specific case of the respondents is that it is the only disciple (chela) who succeeds the deceased Mahant, and members of Sadhu samaj are summoned to witness the coronation of said chela. It is further pleaded that respondent-defendant No. 2 was appointed as a Chela by Mahant Parshuram Ji Giri in his lifetime in the year 1994 and thereafter was given gurumantra and was deputed to study the tenets of Hindu religion and Shastras at various places including the Kailash Ashram as a Brahmchari. It is specifically pleaded that the temple is not a Sanyasi Math. In the prayer clause, besides seeking dismissal of the suit of appellants-plaintiffs, the respondents- defendants also sought issuance of a decree of permanent injunction restraining the appellants-plaintiffs from interfering in the management of temple and the functioning of respondent-defendant No. 2 as a Mahant. It is further prayed that the appellants-plaintiffs be restrained from forcibly removing respondent- defendant No. 2 from the Mahantship of the temple without adopting due course of law. Objections to the interim application were also filed by the respondents- defendants and besides seeking dismissal of the application, they made further prayer that the appellants-plaintiffs be restrained from interfering in the management of the temple and its properties, which is being managed by respondent No. 2, a duly appointed Mahant.

8. The application of appellants-plaintiffs was considered by the learned trial Judge, who vide order dated 30.5.2007 dismissed the same and the appellants- plaintiffs were restrained from directly or indirectly interfering in the management of the temple till the final disposal of the suit. This order, as already stated above, is under challenge in this appeal.

9. Heard learned Counsel for the parties at great length. Considered the matter. Mr. Jalali, learned senior counsel in support of the appeal has inter alia stated that the order impugned is bad in law, as the learned trial Judge has failed to appreciate the pleadings and material even for prima facie purposes. He further stated that the temple belongs to Sanyasi Math (Zoonaa Akhara), which has its own rules and niams for appointing and coronating Mahant of the temple. While arguing the case, the learned Counsel

reiterated all the grounds taken in the memo of appeal. He in support of the argument that the impugned order is illegal, has placed reliance on various judgments reported in H.H. Sudhundra Thirtha Swamiar

Vs. Commissioner For Hindu Religious and Charitable Endowments, Mysore, , Sital Das Vs. Sant Ram and Others, and Baba Charan Dass

Udhasi Vs. Mahant Basant Das Babaji Chela Baba Laxmandas Udasi Sadhu, .

10. Mr. Johal, learned Counsel for respondents argued the case at length to show that the order impugned is legal and valid and does not call for

any interference. He was at pains to explain to the Court that respondent-defendant No. 2 has been properly and legally appointed and coronated

as Mahant of the temple. He further submitted that respondent No. 2 underwent all the religious ceremonies which would enable him to be

appointed and coronated as Mahant of the temple. He further submitted that in the Civil First Miscellaneous Appeal the powers of the appellate

court to interfere with an injunction order passed by the trial court are circumscribed and the appellate court is not entitled to substitute its own

views for that of the views of the trial court and, thus, cannot upset the order of the trial court. He further argued that in case the appellate court

does not agree with the reasons and grounds given by the trial court while passing the order, then the appellate court is required to record its own

reasons. He in support of his contention referred to and relied upon various judgments reported in Sital Das Vs. Sant Ram and Others, and 1993

KLJ. Before dealing with the issues, it becomes necessary to place on record the concern of the Court about the matters like this being brought for

resolution and settlement, at the drop of the hat, to the Court of law. The issues and controversies arising in the like matters should require an

earnest effort for its settlement at the community level. However, that has not happened in this case and the matter has come before this Court,

which is duty bound to administer justice to the parties strictly in accordance with law.

11. The controversy regarding the appointment and coronation of Mahant of the temple owes its origin to two documents placed on the suit record

by the parties along with their respective pleadings. The appellants claim that appellant-plaintiff No. 3 was appointed as a Mahant of the temple on

14.4.2007 in accordance with the rules and niams of the Sanyasi Math (Zoonaa

Akhara), which is evidenced by the resolution dated 14.4.2007.

The another document dated 16.4.2007 is a confirmation given to such appointment by the concerned authorities. The respondents on the other

hand have also placed a resolution dated 14.4.2007 on the suit file along with their written statement to show and demonstrate that it was

respondent-defendant No. 2 who was appointed and coronated as Mahant of the temple in accordance with the rules and rituals.

12. Before proceeding further, it will be appropriate to place on record few events which have taken place during the pendency of this appeal.

13. Respondent-defendant No. 1 filed an application through his counsel, Sh. C. S. Gupta seeking deletion of his name from the array of

respondents. In the said application, supported by an affidavit, respondent No. 1 has stated that he in the capacity of President of the temple was

of the opinion that the Mahant of the temple is to be appointed by the committee and the public. He has further stated that after making a thorough

and detailed inquiry about the customs, usages, parampara of the temple in question, he came to know that only Shri Panch Dashnami Zoonaa

Akhara and the Sadhoo Dharam Sthan Surakhshini Samitee, Jammu and Kashmir are the competent and authorized bodies to appoint the

successor of the deceased Mahant of the temple. It is further stated in the application that respondent-defendant No. 2 misled the committee and

made them to believe that he was the disciple (chela) of deceased Mahant Parshu Ram Giri Ji Maharaj, but now it has surfaced that he neither

visited Jammu nor met the deceased Mahant during his lifetime. Respondent No. 1 further stated that respondent No. 2 has levelled frivolous

allegations against him, he being a businessman by profession has no personal interest in the property of the temple nor in the Mahant thereof, so

sought deletion of his name from the array of respondents.

14. Yet another important development which took place during the pendency of this appeal is that this Court on the motion of appellants passed

an order dated 12.12.2008 in CMP No. 352/2008, wherein certain directions were issued against respondent No. 2. Respondent No. 2 was

directed not to deal with the property of the temple in any manner nor to enter into negotiation with any party in respect of the property of the

temple nor to sell or alienate or authorize anyone to deal with the same. He was

further directed to withdraw the Power of Attorney executed in favour of one Ashok Kumar Jogi regarding the property of the temple and its management. The Court further directed that the Power of Attorney executed by respondent No. 2 in favour of Ashok Kumar Jogi and any subsequent deed executed by the said Attorney holder shall not be given effect to and the same shall be kept in abeyance and not be acted upon. Learned Registrar (Judicial) of the High Court was also directed to manage the affairs of the temple during the interim period. He was directed to submit the status report to this Court regarding the actual rent received from the property of the temple and also to receive rent from the tenants. Learned Registrar (Judicial) was also authorized to take such other steps which would be necessary for running the affairs of the temple. This interim arrangement continues till date. The Panchnama (Mahantnama) dated 14.4.2007 has been placed on record in the suit file to show that respondent No. 2 was properly and duly appointed and coronated as Mahant of the temple. A bare perusal of the said Mahantnama reveals that the Mahant was not entitled to gift out, sale, mortgage or in any manner transfer any of the property of the temple to any person/persons, but still the Mahant executed the Power of Attorney authorizing said Ashok Kumar Jogi inter alia to even execute the sale deed for transferring the property, i.e., subject matter of the Power of Attorney to any other person or even to the attorney holder himself. In view of the orders passed by this Court, FIR has already been filed against respondent-defendant No. 2. Mr. Johal, learned Counsel for respondents submitted at bar that the said Power of Attorney has already been revoked. The age old recognized principles governing issuance or otherwise of temporary injunctions are the prima facie case, balance of convenience and the irreparable injury. The courts cannot restrict themselves to these three established principles only while considering the matter for grant of temporary injunction. The court can in the appropriate cases even travel beyond the settled boundaries to protect the lis or even the public interest or interest of of a community. In order to grant injunction, the prima facie case does not only mean that triable issues are involved, but it would mean that a serious question is involved which requires determination/adjudication at the trial. In the present case what would constitute a prima

facie case begs answer.

15. The parties have taken diametrically opposite stand not only to the temple belonging to one or the other sect, but even about the rules and

niums to be followed in respect of such appointments and coronations. In order to find out a prima facie case, a prima facie finding was required to

be given on the basis of pleadings and material available on the record as to whether the temple belongs to the appellants or to the respondents.

Admittedly, both respondents, follow different customs and niums in appointing and coronating a Mahant of the temple.

16. Mr. Johal, learned Counsel for respondents has placed reliance on a case reported in Sital Das Vs. Sant Ram and Others, which judgment has

been further followed in AIR 1980 SC 707. Para-30 of the said judgment is reproduced as under: binstitution is regulated by custom or usage of

the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment.bThe law laid down by

the Honbsettled that succession to mahantship of a math or religious institution is regulated by custom or usage of the particular institution, except

where a rule of succession is laid down by the founder himself who created the endowment.

17. This judgment thus makes it clear that the mahant is appointed in accordance with the custom or usage of the particular institution, except

where the mode of such appointment is provided by the creator himself. In this case it was thus required to be seen on the basis of pleadings and

material available before the learned trial court as to whom between the two competing parties/sects, the temple could be said to be belonging to

and after recording such a finding for prima facie purposes, it would have become easier for the trial court to record a finding on the prima facie

case. Thus there would have been no difficulty to find out which between the two mahants could be said for prima facie purposes for grant or

refusal of the injunction to have been validly appointed. The learned trial Judge has dealt with this aspect of the matter in the following manner:

Binjunction plaintiffs mainly and inter alia have to show that plaintiff No. 1 has a right and duty, what it calls the domain, to appoint a Mahant for

the Shivalay Mandir and, therefore, the successor to Late Mahant Shri Parshu Ram Giri. The next question would be, did bplaintiff No. 2bMandir,

on 14.4.2007 (Para 4 of the plaint).

18. In determination of the first question, it is important, rather required, to refer to the Rules governing plaintiff No. 1 known as bAkhaaraa Kaa

Memorandum Tathaa Us-kay Parbandh Kay Sanshodit Niyam, bwhereof is appended as annexure bthe plaint. It is this Niyam the plainfiff No. 1

has sought to draw its authority from.

19. To start with, it is to be noted that as per the above Niyam, Shri Panch Dashnaam Zoonaa Akhaaraa (plaintiff No. 1) is an age old Sanstha

(Organization) of Nagaa Digember Sanyaasis. Its territorial jurisdiction extends to whole of India, Sri Lanka and other countries of the world. Rule

4 provides for objects of the Sanstha, which inter alia, and so far as relevant for this case, are to Manage and exercise right over religious places

like Math, Maddi, temple (Mandir) or by whatsoever name they are called, if they are related to the Zoonaa Akhaaraa or are under its direct or

indirect control. Another object of the Sanstha is to look after and change the unsuitable Mahants even of the religious places, which are out of the

management of the Zoonaa Akhaaraa, provided they are related the Zoonaa Akhaaraa and belong to Dashnami Sanyaasis. It is clear thus, that sine

qua none of plaintiff No. 1 bappointment of Mahants, is that the concerned religious place viz temple, math etc must be related to the Zoonaa

Akhaaraa. In context of this case plaintiff No. 1 in order to show its domain over the Shivalay Mandir that may include the jurisdiction to appoint

Mahant or succeeding Mahant has to show that the Shivalay Mandir is releated to the Zoonaa Akhaaraa, (Plaintiff No. 1). It is in the above

backdrop that learned plaintiffsbmake out that the Shivalay Mandir is a bthe control of the Zoonaa Akhaaraa. On the other hand

defendantsbSharma urged vehemently that the Zoonaa Akhaaraa, has no concern to the Shivalay Mandir.

20. Both the sides were heard at length and in detail on 18.5.2007 and 21.5.2007 in the application for temporary injunction, in particular on the

core question as to whether the Shivalay Mandir was related to the Zoonaa Akhaaraa. Ultimately, application for temporary injunction was posted

for orders on 30.05.2007. However, in the intervening period plaintiffsbapplication has submitted some documents, which according to him have

direct and important bearings with the core question in as much as they would show that the Shivalay Mandir belongs to the Zoonaa Akhaaraa and

Mahant Parshu Ram Giri was appointed by the Zoonaa Akhaaraa. It is in place to point out here that when the arguments in the application were

heard there was no material in support of plaintiffs the Zoonaa Akhaaraa. However, position has now changed with the production of above documents.

21. Having gone through the said documents and considering their importance, I resolve not to go into the said core question while dealing with the

limited purpose of temporary injunction and to deal with the said question in the main suit after framing appropriate issue on the point.

22. However, considering the sensitivity involved in the claim and counter claim of the parties and to ensure that serenity of the place is maintained

I for the time being, while skipping the core question as regard the jurisdiction of the Zoonaa Akhaaraa viz a viz the Shivalay Mandir, have

considered the question as to whether the plaintiff No. 3 or the defendant No. 2 have been coronated and installed as Mahant of the Shivalay

Mandir after the death of Mahant Shri Parshu Ram Giri. Consideration of this question would suffice for the purpose of the grant of temporary

injunction. The learned trial Judge after referring to the pleadings and documents on record did feel necessity of determining the core issue

involving the case for prima facie purpose, but the learned trial Judge without recording any reason unceremoniously chose not to consider the main

issue. The learned judge having abdicated its duty to consider and return a finding on the issue of prima facie case has committed a serious error of

law. Without determining the question of prima facie case to find out as to whether temple belonged to appellants or to respondents, the learned

Judge could not proceed to decide the application of the appellants-plaintiffs and would not be in a position in law to grant relief in favour of

respondents-defendants. Furthermore, the learned trial court has commented on the resolutions of the respective parties, which purportedly

evidenced the factum of appointment and coronation of respective Mahants. The learned trial Judge has apparently misconstrued the resolutions

dated 14.4.2007 and 16.4.2007. The English version of the resolutions have been placed on record, which apparently do not appear to be in

consonance with the observations of the learned trial court. The trial court has further gone wrong in recording a finding that for prima facie

purposes the resolution evidencing appointment and coronation of respondent-defendant No. 2 seems to be above-board, whereas the documents

of the appellants-plaintiffs are clouded with suspicion. The learned trial Judge has further skipped over the affidavit of Mahant Phool Giri. The

learned trial Judge without there being any material on record has recorded a finding of appellants-plaintiffs having manipulated the documents and

have not thus come to the Court with clean hands. Such a sweeping observation could not have been made by the learned trial judge while

considering and deciding an interim application.

23. The impugned order is further illegal and bad in law because the learned trial Judge has not considered the impact of balance of convenience

and irreparable injury on the case in hand. The learned trial Judge has not adverted itself to the said recognized principles of law and, accordingly,

no finding for prima facie purpose is recorded in this behalf. The impugned order thus is rendered illegal and bad in law.

24. The impugned order is further rendered bad as the learned trial Judge has not considered the effect of documents which were placed on record

by the appellants-plaintiffs by way of filing of an application. The learned trial Judge shall have to consider the fundamental issue of community

interest also. The judgments referred to by the learned Counsel for the parties refer to the general principles of law about the grant or refusal of

injunction and about the appointment of a Mahant.

25. Faced with this situation, this Court has the option either to set aside the order and remit the matter back to the learned trial court for

adjudication of the issues, as summarized above, for grant or otherwise of the injunction, or to consider the case in its entirety and then pass orders

in the injunction application.

26. If the second option is followed, then the parties may lose the forum of appeal, which may not be in the interest of parties. The learned trial

Judge has failed even for prima facie purpose to consider the material issues involved in the case and has also failed to record the prima facie

findings about the same. This Court, accordingly, deems it appropriate to set aside the order and remit the matter back to the learned trial court for

passing of orders afresh after hearing the parties and considering the material available on the suit file. In view of the above, this appeal is allowed

and the order dated 30.5.2007 passed by the learned Principal District Judge, Jammu in File No. 03/Civil Suit (File No. 23/Misc.), in case titled,

Shri Panch Dashnaam Zoonaa Akhaaraa and Ors. v. Ashok Gupta and Anr., is set aside. The learned trial Judge is directed to reconsider the

matter in view of the observations made in this judgment and pass orders in accordance with law after hearing the parties and after considering the

entire material available on the file. Till the injunction application is decided, the interim arrangement made by this Court shall continue. It is,

however, made clear that if some further assistance is required to implement and execute the orders of this Court, the parties are at liberty to

approach the learned Principal District Judge, Jammu, who would pass appropriate orders in accordance with law.

27. Parties through their counsel are directed to appear before the learned trial Court on 5th June 2009.

28. Registry is directed to send back the record of the trial court forthwith along with a copy of this order.