
(1993) 10 AHC CK 0068
In the Allahabad High Court
Case No : F.A.F.O. No. 718 of 1993

Shri Sarveshwari Samooh and Another	APPELLANT
Vs	
Siddhartha Gautam Ram and Others	RESPONDENT

Date of Decision : 08-10-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 8 Rule 8A
Evidence Act, 1872 — Section 68
Succession Act, 1925 — Section 2, 63

Citation : (1993) 3 AWC 1871 : (1994) RD 524

Hon'ble Judges : S.P. Srivastava, J;A.P. Misra, J

Bench : Division Bench

Advocate : P.P. Srivastava, Tarun Agarwal and Sudhir Chandra, for the Appellant; Rakesh Dwevedi, for the Respondent

Final Decision : Disposed Of

Judgement

S.P. Srivastava, J.—A vacancy in the office of the President of the Committee of management of a society being ran in the name and style of "Sarveshwari Samooh, Varanasi" registered under -the provisions of Societies Registration Act came into existence on 29-11-1992 on account of the death of the then President in office. A dispute between the two rival claimants -fop the aforesaid office led to the filing of original suit No. 265 of 1993 on 22-4-1993. In this suit "Sri Sarveshwari Samooh", the society was arrayed as plaintiff No. 1 through its President Sri Tej Pratap while Tej Pratap was arrayed as plaintiff No. 2. The plaintiffs prayed for a decree of permanent injunction restraining the defendants from causing any interference or obstruction of any nature whatsoever in the management of plaintiff No. 1 with plaintiff No. 2 as its President with the office bearers and the members of the Committee of management of plaintiff No. 1 as constituted on 27-12-1992. The defendants who were sought to be restrained as indicated above were Siddharth Gautam Ram. Priyadarshi "Ram, Anil Ram and Gurupad Sambhav Ram who had been arrayed as defendants No. 1 to 4 respectively.

2. It may be noticed that by means of an application dated 4-5-1993, paper No. 28-C, the defendants No. 2 and 3 viz. Priyadarshi Ram and Anil Ram, accepting the claim of the plaintiffs and asserting that they had been wrongly impleaded prayed that the injunction sought by the plaintiffs may be granted against the defendants No. 1 and 4. In view of this application, the dispute stood confined between the plaintiffs and defendants No. 1 and 4 viz. Siddharth Gautam Ram and Gurupad Sambhav Ram.

3. During the pendency of this suit, the plaintiffs moved an application paper No. 6-C praying that the defendants may be restrained from causing any interference or obstruction of any nature whatsoever in the management and daily functioning of plaintiff No. 1 with plaintiff No. 2 as its President with the office bearers and members of the Committee of Management of plaintiff No. 1 as constituted on 27-12-1992 till the disposal of the suit.

4. It may be noticed at this stage that it is not disputed before us that the Society being run in the name and style of "Sarveshwari Samooh", Varanasi is charitable society having several branches all over the country. It is also not disputed that the Society owns large properties which vest in its desides large movable and immovable properties which are held by it in trust, Such properties, both movable and immovable, obviously vest in the governing body of the Society which have the status of the trustees also.

5. The decree of the prohibitory injunction was claimed alleging that Bhagwan Ram, the founder of the Society continued to hold the post of President till his death. He had the requisite authority under the Bye-laws of the Society to appoint any one as President subsequent to his death by nomination and the nominated President stood vested with all the powers of the President. The case of the Plaintiff No. 2 was that through a will dated 26th August, 1983, Bhagwan Ram had nominated him to be the President after his death. Bhagwan Ram died on 29th November, 1992 and the vacancy occurring in the office of the President was filled up by the plaintiff No. 2 nominee President who took over the office of the President of the Managing Committee of the Society on 27th December, 1992. According to the plaintiffs, in the committee of management which was functioning prior to 27th December, 1992 with Bhagwan Ram as President, the office of the Vice President thereof was held by plaintiff No. 2 and w.e.f. 27th December, 1992, the plaintiff No. 2 look over as its President. It was further asserted that the society with plaintiff No. 2 as its President and the other persons as office bearers of the committee of management as on 27-12-1992 were in possession over the properties of the society and were discharging their duties and managing the affairs of the Society. Since it was asserted that Defendants were trying and threatening to interfere in the management and day to day functioning of the plaintiff No. 1 through the plaintiff No. 2 as President, the necessity arose for the suit. The cause of action for the suit was shown to have accrued on 20-4-1993 when the defendants tried to interfere and obstruct in the management and day to day functioning of plaintiff No. 1 with plaintiff No.

2 as its President.

6. In the affidavit filed in support of the application for temporary injunction, paper No. 6-C, the assertions made in the plaint were reiterated. It was asserted that the will dated 26th August, 1983 containing the nomination of the plaintiff No. 2 as President after the death of Bhagwan Ram was the only and the last will of the testator Bhagwan Ram.

7. The application for temporary injunction indicated above was contested by Siddharth Gautam Ram, defendant No. 1. It was asserted that the plaintiff No. 2 was not the President of the Committee of Management as claimed and the suit of the plaintiff No. 1 through Tej Pratap was not maintainable. It was also asserted that the plaintiff No. 2 had no right to sue in the name of plaintiff No. 1. It was further asserted that the will dated 26-8-1993 was not the only and the last will of Bhagwan Ram as alleged. It was further asserted that Bhagwan Ram had executed a will dated 11-4-1992 where under the earlier will dated 26-8-1983 had been revoked and cancelled. This will dated 11-4-1992 was the last will of the testator Bhagwan Ram, wherein the defendant No. 1 had been nominated to be the President of the Society and was entitled to hold the office of the President of the Committee of Management. It was further asserted that the will dated 11-4-1992 had been duly executed and was given effect to on 10-4-1993 on which date it was opened in a meeting of the Society and the representatives of its various branches. It was further alleged that no committee of management was constituted on 27-12-1992 as claimed and the Committee of Management alleged to have been constituted on 27-12-1992 is not functioning at all. It was claimed that the defendant No. 1 had assumed the office of the President and was doing all the acts on behalf of the Society and was in possession of the assets of the Society and was controlling all the new branches of the Society and was doing all management and daily affairs of the Society. It was also asserted that the plaintiff No. 2 had been expelled from the membership of the Society in the meeting held on 21-4-1993 alongwith other members. It was further asserted that since plaintiff No. 2 was neither in possession of the Society nor the so-called office bearers of the Society were discharging the duties and managing the affairs of the plaintiff No. 1 as alleged, no injunction as claimed could be issued. It was also asserted that the suit for injunction was not maintainable and therefore, no interim injunction could be granted.

8. The assertions made in the affidavit filed by the defendant No. 1 were controverted by the plaintiff No. 2 who filed a rejoinder affidavit in reply thereto. It was asserted that the will dated 11-4-1992 alleged to have been executed by Bhagwan Ram was a manufactured and concocted piece of paper and had never been executed by Bhagwan Ram. It was also asserted that on 11-4-1992, the plaintiff No. 2 held the office of Vice President in the committee of management of the society and on that day neither the alleged scribe of the will dated 11-4-1992 nor the alleged attesting witnesses had visited the Kusth Seva

Ashram, Varanasi, It was further claimed that 11th April, 1992 was a Ram Navami day and Bhagwan Ram, the then President remained in the Seva Ashram, Parao, Varanasi during the whole day and night and hundreds of his Chelas had assembled there and he was so busy all the time that the alleged execution and attestation of any will on that day at Parao, Varanasi was not only improbable but was impossible. It was asserted that the alleged will dated 11-4-1992 had been concocted, fraudulent and Farzi. It was pointed out that Bhagwan Ram had left Varanasi on 6th May, 1993 for his treatment in U.S.A. and he did not return to India as he breathed his last there on 29-11-1992. In his rejoinder affidavit, the plaintiff No. 2 categorically asserted that the vacancy in the office of the President which had occurred on the death of Bhagwan Ram was filled up on 27th December, 1992 when he assumed that office which he was continuing to hold. It was also asserted that the defendants No. 1 and 4 were committing wrongful, fraudulent and invalid acts and they wanted to derive advantage of their own wrongs and were creating a situation of turmoil in the full working and running of the Society. The assertion that the plaintiff No. 2 had been expelled from the membership of the society in the meeting held on 21-4-1993 was denied asserting that no such meeting was ever held where the expulsion is said to have taken place. A supplementary affidavit was filed by Siddharth Gautam reiterating the assertions made in the counter affidavit filed by him. In this supplementary affidavit however, it was indicated that Bhagwan Ram was so much horrified by the acts of plaintiff No. 2 and his father, that if the secrecy regarding the execution of his second will dated 11-4-1992 was exposed to the plaintiff No. 2 or his father in that event Bhagwan Ram might have been forced to face evil consequences. It was also asserted that the second will had been drafted by Ajit Singh, an Advocate of Lucknow in his own hand writing and the will was signed by Bhagwan Ram and by the attesting witnesses. These facts were conveyed by Sri Ajit Singh Advocate when the aforesaid will was opened. It was also pointed out that the Plaintiff No. 2 wanted to grab the properties and assets of the society for which he had a cherished desire since long. It was further asserted that the Ashram being run by the Society was meant for ailing lepers whose numbers were increasing day by day, It was also asserted that the second will had been duly acted upon and plaintiff No. 2 was not in possession over the management and control of the Society and its properties and therefore, the suit of injunction was not maintainable. It was also asserted that defendants Nos. 1 and 4 were in possession and control of the Society and were performing their duties as President and records etc., were in possession and control of defendants Nos. 1 and 4 therefore, balance of convenience also lay in favour of the defendants.

9. The trial Judge after considering the various affidavits and material brought on record came to the conclusion that the affairs of the Society were being managed by the defendants Nos. 1 and 4 and the Committee of Management with defendant No. 1 as its President was really running and managing the Society. The trial Judge however, did not go into the question of the due execution and

attestation of the second will allegedly executed by Bhagwan Ram on 11-4-92 as in its view it would not have been proper to do so in the absence of evidence at this stage. It was observed that the plaintiffs had not been able to establish clearly the prima-facie case in their favour and in the circumstances of the case, since plaintiffs and defendants Nos. 1 and 4 were members of the Society, the plaintiffs were not likely to suffer any irreparable loss and consequently the balance of convenience according to the trial Judge did not lie in favour of the plaintiffs.

10. In view of the findings referred to above the trial Judge rejected the application 6-C filed by the plaintiffs seeking temporary injunction but directed both the parties to maintain status quo as obtaining on the date of judgment i.e. 8-6-93.

11. We have heard Sri Sudhir Chandra, learned Senior Advocate for the plaintiffs Appellants and Sri Rakesh Dwivedi, Additional Advocate General for the contesting defendants-Respondents at some length and have carefully perused the record.

12. Learned Counsel for the Appellants has strenuously contended that in the presence of the "Will" of Bhagwan Ram dated 26-8-83 which was a registered one and the execution, attestation or genuineness whereof had not been disputed at all, there could be no justification for ignoring the nomination of the plaintiff No. 2 contained therein whereunder he stood vested with the right to occupy the office of the President of the Committee of Management of Society. It has further been contended that this nomination had actually been implemented on 27-12-92, when the plaintiff No. 2 had assumed the office of the President in question. The contention is that unless the Will dated 26-8-83 could be established to have been revoked or cancelled by any subsequent Will and the plaintiff No. 2 was ousted from the office occupied by him in accordance with law, there could be no justification for not continuing the status quo as it obtained on 27-12-92 especially when the contesting defendants had failed even to bring on record the original "Will" said to have been executed on 11-4-92 wherein allegedly a fresh nomination was made in favour of defendant No. 1 whereunder he stood authorised to hold the office of the President of the Committee of Management in question. In this connection it was further stressed that the alleged Will dated 11-4-92 could not be taken notice of at all as the defendants had not cared to file even the affidavits of either the scribe of the Will or any of its attesting witnesses which could even prima-facie, establish the due execution of the same. It was further contended that on the own showing of the defendants the arrangement which was continuing upto 10-4-93 had been disturbed thereafter and the interference made by the defendant on the strength of the nomination contained in the alleged second Will dated 11-4-92 and the activities done by the alleged. Committee of Management with defendant No. 1 as its President and its dealings with the affairs of the Society in a forcible manner had to be ignored altogether as otherwise it would amount to allowing premium to

unlawful activity. The contention is that in the circumstances of the case the law should not be seen to sit by limply while those who defy it go free those who seek its protection loose hope.

13. The learned Counsel for the defendant-Respondent has on the other hand contended that the nomination contained in the Will dated 26-8-83 could be revoked and superseded by a fresh nomination. It is asserted that Bhagwan Ram had absolute right to nominate his successor in office and it Was the last nomination which had to prevail According to the learned Counsel this last nomination was contained in the document dated 11-4-92 wherein it had been specifically mentioned that the earlier nomination was being revoked and cancelled. It was contended that in the circumstances, the procedural safeguards relating to the execution of a "Will" were not at all required to be adhered to and as soon as the contents of the document dated 11-4-92 were made public and came to be known, the nomination contained therein became effective and had to be implemented. According to the learned Counsel, the nomination, was, in fact, implemented in the congregation of the various office bearers of various branches of the Society who were present in the meeting convened for 10-4-93 and thereafter the nominee successor in office the defendant No. 1 assumed the office and the Committee of Management headed by him gained effective control of the affairs of the Society; and the institutions run by it which is conclusively established even from the documentary evidence on record. It was asserted that once this effective control over the affairs of the Society and movable and immovable properties vesting in it or lying in trust with it was taken over by the Committee of Management headed by defendant No. 1, no prohibitory injunction as claimed could have been granted. It was asserted that in the circumstances, considering the questions relating to prima-facie, case and the balance of convenience no ground at all had been made out for any interference in the discretion exercised by the trial court.

14. We have carefully perused the true copies of the documents dated 26-8-83 as well as the one dated 11-4-92. We have also perused the record including the amended byelaws of the Society, on which strong reliance has been placed by the learned Counsel.

15. A "Will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death as indicated in section 2(h) of the Indian Succession Act. Under the General Clauses Act "Will" includes a codicil and every writing making a voluntary posthumous disposition of property. A "Will" or testament is obviously a declaration in a prescribed manner of the intention of the person making it, with regard to the property belonging to or vesting in the testator and the matters connected therewith which he wishes to take effect upon or after his death. There can be no manner of doubt that in order to be a "Will" as envisaged under the provisions of the Indian Succession Act, the testator must possess proprietary rights or an interest in the Estate in respect whereof disposition is

made which is to become effective on or after his death. In cause a document contains a disposition which does not by any stretch of imagination relate to any proprietary right or interest in the Estate belonging to or vesting in the testator in that contingency the document cannot fall within the ambit of a "Will" as envisaged under the provisions of the Indian Succession Act. Such a document being not a "Will" cannot be subjected to the same rigours a procedural safeguards relating to proof etc., in respect of a "Will" as contemplated under the aforesaid Act. On a perusal of the document dated 26-8-83 it is apparent that Bhagwan Ram had made it clear therein that the "Sarveshwari Samooh" Society had its own property. Sri Bhagwan Ram had also clarified in the document that the properties belonging to him had been given to the trust referred to therein viz. Baba Bhagwan Ram Awdhoot Trust. En the aforesaid document Bhagwan Ram had specifically referred to his right to nominate a chief trustee of the trust and the President of the Sarveshwari Samooh & purporting to exercise this right Bhagwan Ram had nominated Sri Tej Pratap the plaintiff No. 2 to be the President of Sarveshwari Samooh and Sri Gurupad Sambhav Ram, to be the Chief trustee of Baba Bhagwan Ram Awadhoot Trust. The nomination of Sri Gurupad Sambhav Ram as well as Sri Tej Pratap was, however, made subject to certain riders/restrictions controlling their authority to deal with the property vesting in the trust or the Society.

16. The document dated 11-4-92 a copy of which has been filed purports to be on the same lines A perusal of this document shows that thereunder the nomination made in the earlier document dated 26-8-83 was cancelled. By the year 1992 apart from the "Baba Bhagwan Ram Awdhoot Trust" another trust being "Aghor Parishad Trust" had also came into existence. In this document dated 11-4-92 also Sri Bhagwan Ram clearly indicated that "Baba Bhagwan Ram Avdhoot Trust", Sri Sarveshwari Samooh and "Aghor Parishad Trust" had their own independent properties. Sri Bhagwan Ram after clearly-pointing out that he was exercising the right secured in his favour in regard to the nomination as contemplated in the byelaws applicable to both the trusts and the Society, he was nominating Gurupad Sambhav Ram to be the Chief Trustee of Baba Bhagwan Ram Avdhoot Trust and Sri Sidharth Gautam Ram to be the Chief Trustee of Aghor Parishad Trust. Under the same document Sidharth Gautam Ram was nominated as President of Sri Sarveshwari Samooh Society Sri Priya Darshi Ram was nominated as permanent Vice President and Sri Anil Ram was nominated as permanent Secretary of the Committee of Management of the Society. These nominations were, however, subjected to certain riders/restrictions relating to the Management and the Administration of the Society and the procedure to be adopted for the same. The riders also included restrictions in regard to the transfer of the property vesting in the Society or the Trust etc. It was also indicated that the nominee will not have any interest whatsoever in the properties belonging to the trust or the Society and will have no right whatsoever in the Chadhawa, Dan, Nakad, movable or immovable properties which was given to the Society or the Trust or even given to them in the capacity of the office

bearers of the Society or the Trust and all that property shall be utilised for public, good medicine, education spiritual uplift etc.

17. However, in para 11 of the aforesaid document Shri Bhagwan Ram made a provision for the payment of an amount of Rs. 750/- per month towards pocket expenses to the Chief Trustee of the Trust, Adhaksha of the Trust and the President of the Sarveshwari Samooh Society. A further provision was made for the payment of an amount of Rs. 500/- per month to other two nominee towards pocket expenses. The nominees were further made entitled to free residence, food, clothing, medicine, medical expenses, Travelling Allowances which expenses had to be borne by the Society or the Trust as the case may be under the document dated 11-4-92. Sri Bhagwan Ram also purported to grant, permission for payment of an amount of Rs. 25,000/- as emergency expenses to the President of the Trust and, the Society, out of, the amounts lying in deposit in the trust or the Society.

18. From the perusal of the byelaws of the society a copy of which has been filed on the record it appears that the tenure of the Committee of Management is three years. Under the byelaws, the President having a life tenure stood vested with the right to appoint the office bearers on the expiry of every third year and in case necessity was felt the office bearers could be changed even earlier. The byelaws vested the President with a right to nominate his successor in office by an order in writing and such a nominee President could exercise all the rights of the founder President. The byelaws were amended on 30-5-65. Under the amended byelaws the President stood vested with the right to appoint the Committee of Management and nominate his successor in office by a written order.

19. Taking into consideration the nature of the documents dated 26-8-83 and 11-4-92, and the recitals contained therein, it seems to us prima-facie that neither of the documents can be termed as "Will" as contemplated Under the provisions of the Indian Succession Act. Sri Bhagwan Ram had unequivocally asserted in both the documents that he had no right in the properties of the trust or the Society which either vested in them or were lying in trust with them. He had further clearly asserted that he was only exercising the right of nomination secured in his favour under the rules governing the trust or the Society. We are of the opinion that the right of nomination secured under the rules in question cannot be deemed to be a proprietary right or a right in any Estate" and in this-view of the matter since Bhagwan Ram was not making any disposition of any right in any property vesting in him or any of his interest in any Estate, the documents referred to above could not be subjected to the same rigours relating to the procedural safeguards which stand attached to the matters relating to the execution or proof of a "Will" as envisaged under the provisions of the Indian Succession Act.

20. In the aforesaid view of the matter, it seems to us that neither the requirements of section 68 of the Evidence Act nor the requirements

contemplated u/s 63 of the Indian Succession Act can be said to be attracted to the document dated 11-4-92. Moreover, at the stage of interlocutory remedy like the one with which we are concerned, the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. In the facts and circumstances of the present case at the stage of the consideration of the matter relating to the grant of interlocutory injunction, considering the nature of the document dated 11-4-92 in the light of what has been Stated hereinbefore the omission to file the affidavits of either the scribe of the document dated 11-4-92 or that of any of the attesting witnesses thereto could not be deemed to be of much significance.

21. A temporary injunction or an interlocutory order contemplated under Order XXXIX rule 1, CPC can be granted in the situations envisaged therein on the proof of the facts referred to in Clauses (a) or (b) thereof which can be proved by affidavit or otherwise. It cannot be lost sight of that the grant of injunction is a serious matter and courts should always take good care to grant an injunction in these cases only where such an injunction is essential. The power given to the court to act on affidavits by this rule is of a special nature and must be contrasted from general power of receiving proof of facts on affidavit and receiving evidence on affidavits on applications and the conditions and limitations prescribed in connection with the exercise of general power should not be imported in connection with the exercise of this special power. In its decision in the case of Abdul Hameed Khan Vs. Mujeed-Ul-Hasan and Others, , a learned Single Judge of this Court after considering various decisions had observed that the safeguards contemplated under order XIX of the CPC are not necessarily inbuilt in a proceeding relating to an interlocutory order under order XXXIX rule 1 of the CPC but even in that proceeding there was no bar to the court to summon a witness for cross examination if it thought it necessary to do so in the interests of justice. In the decision in the case of Sakalabhaktula Vykunta Rao and Others Vs. Made Appalaswamy, , it was observed that Order XXXIX Rule 1 CPC provides expressly that the Court is permitted to dispose of the interlocutory application by affidavits. In view of the urgency involved in the matter, the regular procedure of examining the petitioner and his witnesses and Respondent and his witnesses is dispensed with and the Court is given a special power to decide the matter on affidavits. It was observed that the Court is given a special power to decide the matter by affidavits and the scope of enquiry is quite limited and the rights of parties are not decided finally. It seems to us that the power given to the Court under Order XXXIX Rule 1, CPC to decide the matter by affidavits is unfettered and has to be understood in the light of the decision in the case of Abdul Hameed Khan (supra). In view of this special power to decide the application for interlocutory injunction, it is not incumbent on the trial court to insist for the production of an original document from a defendant which is required to be produced at the stage as contemplated in Order VIII, Rule 8 A, CPC unless the trial court requires the production of such a document at an earlier stage in the

interest of justice. Admittedly, the stage for filing original documents by the defendants had not reached in the present case, when the matter relating to the interim injunction was being disposed of as the written statement has not been filed so far. The plaintiffs themselves never insisted upon the production of the document dated 11-4-92 in original. The trial court does not appear to have found it necessary to have the original document on record for the purposes of the disposal of the matter relating to the grant of interlocutory injunction. In the circumstances, therefore, we are not inclined to accept the submission of the learned Counsel for the plaintiffs that the omission to produce the original document dated 11-4-92 was fatal and nomination contained in the said document was liable to be ignored on this ground alone; especially when the Photostat copy showing it to be the true content of the said document was annexed with the affidavit filed on behalf of the defendants and had been brought on record.

22. A very significant feature which has come on record and is evident from the perusal of the byelaws of the Society is that therein apart from the general body of the Society two other executive bodies are contemplated. The general body of the Society is referred to as the "Sabha" while the executive body is referred to as "Samooch". The Committee of Management has been referred to as the "Prabandh Samiti". The byelaws provide that the Samco shall consist of "Sanrakshaks" who have to be elected from the members of the Sabha by the 3/4th of the majority present and voting in a meeting of the general body of the Society the quorum being seven. It is further provided that the "Samooch" will have its office bearers and that the Committee of Management or Prabandh Samiti, the byelaws stipulate, must have the office bearers of the executive body i.e. "Samooch" as its office bearers. Consequently, the office bearers of the Committee of Management i.e. "Prabandh Samiti" can only be those who stand elected as "Sanrakshaks" and none else. The byelaws further provide that the Committee of Management i.e. Prabandh Samiti must have not less than 13 and not more than 17 members and out of these members excepting the treasurer six office bearers and other members have to be nominees of the President. The quorum of the meeting of the Committee of Management stands fixed at five and the office bearers are indicated to be President, Vice President, Secretary, Joint Secretary Publication Secretary, Manager Treasurer and Inspector.

23. From a perusal of the byelaws, it is apparent that the right of nomination which was vested in the President was confined to the "Sanrakshaks" who are elected in the meeting of the general body by 3/4th of the majority of votes. No other person could be nominated as an office bearer of the Committee of Management except the "Sanrakshaks" i.e. elected representatives. Moreover the byelaws make it absolutely necessary that a Committee of Management should consist of at least 13 members.

24. In para 11 of the affidavits filed by Sri Tej Pratap, it has been asserted that after taking over as President he constituted a Committee of Management on

27-12-92 which had nine, members in all. According to this affidavit, this Committee of Management had five office bearers i.e. President, Secretary, Joint Secretary, Treasurer and Prachar Mantri and it had four other members.

25. In para 10 of the affidavit of Sidharth Gautam filed in the court below it has been asserted that on 10-4-93 after the opening of the envelope containing the document dated 11-4-92 he assumed the office of the President and constituted a Committee of Management and its first meeting was held on 11-4-93. From what has been asserted by Sidharth Gautam it transpires that the Committee of Management of which he claims to be the President had 11 members in all. In this Committee of Management there were five office bearers and six members. The office bearers were President, Manager, Joint Secretary, Treasurer, Vice President and Secretary.

26. If the byelaws of a Society prescribed a particular mode regulating the constitution of Committee of Management and further lay down the criterion relating to the strength of the Committee of Management and its office bearers, the said regulatory measures and the criteria have to be strictly adhered to in order to bring in existence; a Committee of Management which can be deemed to be vested with the authority in regard to the control and management of the Society. A Committee of Management which appears to have been constituted in utter disregard of the byelaws of the Society cannot be deemed to be such a Committee of Management which can exercise any jurisdiction whatsoever in the matter relating to the control of the affairs of the Society or impose its decisions on the Society. Any action by such an illegally constituted Committee of Management cannot, in any manner affect the rights of the Society and Ins to be ignored altogether being without jurisdiction.

27. In the present case what we find is that the alleged Committee of Management constituted on 27-12-92 as indicated above cannot be deemed to be a Committee of Management constituted in accordance with the byelaws of the Society. The byelaws of the Society do not envisage any Committee of Management with less than 13 members. The byelaws further do not envisage any office bearers or members of the Committee of Management to be persons other than "Sanrakshaks" who are elected representatives. No effort whatsoever was made by the plaintiffs, to even prima-facie, establish that the office bearers of the Committee of Management said to have been constituted on 27-12-92 were "Sanrakshaks" or the elected representatives as contemplated under the byelaws. There is nothing on the record to indicate that under what circumstances a Committee of Management with lesser number of members than prescribed under the byelaws had been constituted. The only assertion of the plaintiffs was that the Committee of Management had been constituted in exercise of the right of nomination. No effort was made to even prima-facie, establish that the nominee office bearers or members of the alleged Committee of Management of which the plaintiff No. 2 claims to be the President satisfied the minimum eligibility criteria which entitled them for being nominated either as

office bearer or a member of the Committee of Management. In such a circumstance nothing could turn upon the Constitution of Committee of Management on 27-12-92 which could not be shown even prima facie, to have been constituted complying with the byelaws of the Society.

28. So far as the Committee of Management claimed to have been constituted on 11-4-93 with Sidharth Gautam as its President is concerned, suffice it to say that the claim in this regard cannot be put on a better pedestal as compared to the claim of the plaintiff No. 2 in respect of the Committee of Management alleged in have been constituted on 27-12-92. The Committee of Management of which Sri Sidharth Gautam claims to be the President by virtue of the alleged nomination contained in the document dated 11-4-92 suffers from identical defects which have the effect of rendering the Committee of Management with Tej Pratap as its President to be without jurisdiction and non-est having been constituted in disregard of the provisions contained in the byelaws governing the Society in question. Obviously, therefore, on the basis of the materials on record this Committee cannot be recognised in law.

29. The learned Counsel for the plaintiff-Appellants has urged that since the Committee of Management constituted on 27-12-92 was actually in effective control of the Management of the Society and was authoritatively dealing with its affairs which situation continued at least upto 10th of April 1993 even according to the contesting defendants, the trial court ought to have ensured that the status quo prevailing on 10-4-93 in regard to the Management of the Society is maintained and in that view of the matter the contesting defendants should have been asked to restore back the status-quo-ante as prevailing on 10-4-93 by issuing an interlocutory mandatory injunction to that effect.

30. It was asserted that the status quo as obtaining on 27-12-92 which even on the showing of the defendant continued to exist at least till 10-4-93 could not be disturbed in a manner which dislodged the Committee of Management with the plaintiff No. 2 as its President and consequently the Court sought to have granted the injunction sought for so that the aforesaid status quo could continue ignoring the unauthorised actions of the contesting defendants which at the most were indicative of forcible interference in the functioning of the Committee of Management in office on 27-12-92 and which could not prevent the granting of the injunction sought for. The contention is that it was incumbent on the court below to preserve, and maintain the last non-contested status which preceded the controversy.

31. The learned Counsel has in support of this submission heavily relied upon certain observations of the Apex Court made in its decision in the case of Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, wherein it has been pointed out that the relief of interlocutory mandatory injunctions are, granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally

done or the restoration of that which was wrongfully taken from the party complaining.

32. In the aforesaid decision the Apex Court had noticed the test to be applied in granting mandatory injunctions on interlocutory applications as indicated in 24 Halsbury's Laws of England (4th Edn) whereunder it was pointed out that a mandatory injunction can be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances it will not normally be granted. It was further observed that however, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, such as where, on receipt of notice that an injunction is about to be applied for, the defendant hurries on the work in respect of which complaint is made so that when he receives notice of an interim injunction, it is completed, a mandatory injunction will be granted on an interlocutory application.

33. The Apex Court in its aforesaid decision in the case of *Dorab Cawasji Warden* (supra) had laid emphasis on the fact that being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court, to be exercised in the light of the facts and circumstances in each case. It was further indicated in the aforesaid decision that in such case the plaintiff must have a strong case for trial, that is, of a higher standard than a prima-facie, case that is normally required for a prohibitory injunction and further it must be necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money and further the balance of convenience lies in favour of the one seeking such relief.

34. The learned Counsel for the plaintiff-Appellants has urged that in the facts and circumstances of the present case there could be no justification for passing an order for maintaining "status-quo" which devolves in favour of the defendants. The contention is that the order of maintaining status-quo as obtained on 8-6-93 with the finding that the office of the President in question was being held by the defendant No. 1 and the Committee of Management with him as President was in actual control of the affairs of the Society necessarily amounted to injuncting the plaintiffs from interfering in the running and managing of the Society by a Committee of Management with defendant No. 1 as its President during the pendency of the suit. The learned Counsel contends that in the circumstances of the case no such order could have been issued.

35. We have given our anxious consideration to the submission indicated above. Under the byelaws of the Society the tenure of Committee of Management is only three years. Issuance of no such injunction could be justified which would have resulted in the unmerited extension of the tenure of Committee of Management contrary to the byelaws of the Society simply on the basis of the interim injunction. Considering the pace with which the suit is proceeding specially the fact that even after the expiry of more than one year the written statement has not been filed, the disposal of the suit may be delayed. In one of its decisions in

the case of Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, , the Apex Court observed that it was a matter of common knowledge that on many occasions even public interest also suffers in view of such interim orders of injunction, because persons in whose favour such orders are passed are interested in perpetuating the contraventions made by them by delaying the final disposal of such applications.

36. In the circumstances of the present case, in view of what has been indicated above we disapprove the order of "status-quo" as issued by the trial Judge under the impugned judgment.

37. From the materials on record we find that a meeting of the office bearers of the various branches of the "Sarveshwari Samooh" Society appears to have been held on 10-4-93. In this meeting "the office bearers of the various branches of the Society situate in Dalton Ganj, Jamshedpur, Renukoot, Ranchi, Mohanipur, Jagdalpur, Saran, Mirzapur, Dhanbad, Jaunpur, Azamgarh, Dalmia Nagar, Rohtas Garh, Palamu, Ambikapur, Delhi, Arrah, Bhojpur, Patna, Rai Bareilly, Faizabad, Prayag, Varanasi, Ram Nagar, Gonda, Sakaldeepa, Lucknow, Satna etc., were present and these office bearers as representatives of the various branches expressed their confidence in Sidharth Gautam Ram, the defendant No. 1.

38. Further from the materials on record, we find that separate resolutions of the governing-bodies of various branches of "Sarveshwari Samooh" Society were passed subsequent to 10-4-93 wherein confidence was reposed in Sidharth Gautam, defendant No. 1. These separate resolutions had been passed by the branches of the Society in districts of Sultanpur, Lucknow, Sahjaura, Rai Bareilly, Kanpur, Azamgarh, Garhwa, Renukoot, Wasted, Arrah, Palamu, Faizabad, Jaunpur.

39. In such a situation, it seems to us that any interim injunction as claimed would have the effect of forcing upon a section of the public who are the members of the organisation of Sarveshwari Samooh, a person whom they are unable to recognize and forbidding them to have the person as president whose ministration they desire. We are, therefore, not inclined to accept the submission of the learned Counsel for the Appellant that the present one was a fit case for the grant of a mandatory injunction restoring the status quo ante prevailing on 9-4-93. The submission in this regard is, therefore, rejected.

40. In the peculiar facts and circumstances of the present case we are of the considered opinion that no such ground at all had been made out which could justify the issuance of an interlocutory injunction either in a prohibitory form or in a mandatory form as claimed by the Appellant.

41. The grant of an injunction is in the nature of an equitable relief and conditions can be imposed so that the interest of the parties may be safeguarded. There is no prohibition under CPC that a condition cannot be attached to .in order of injunction.

42. This Court in its decision in the case of Dhaneshwar Nath Tewari Vs.

Ghanshyam Dhar Misra, , decided by a Division Bench had observed that "apart altogether from order XXXIX of the Code, the Court below has ample jurisdiction to pass an order providing for the protection and security, of the property which is the subject matter of litigation. It was further indicated that the CPC was not exhaustive, reiterating the view of this Court in the case of Durga Dihal Das v. Anoraji(sic) ILR 17 All 29 , which view, it was pointed out, had been followed in other High Courts. This Court observed that where the circumstances require, the court can proceed on the assumption of the possession of inherent power to act ex debito justitiae and do real and substantial justice for the administration of which alone it exists.

43. The Division Bench of this Court in its aforesaid decision quoted with approval the observations made in a decision of the Calcutta High Court indicating that the courts powers are not unequal to the desire to order that which it believes to be just.

44. In yet another decision of a Division Bench of this Court in the case of the The Allahabad Bank Ltd. Vs. Rana Sheo Ambar Singh and Others, , it had been observed that the courts have inherent jurisdiction to issue temporary injunction in circumstances which are not covered by the provisions of order XXXIX of the Civil Procedure Code, if the court is of the opinion that the interest of justice require the issuance of such interim injunction.

45. Further in view of the decision of the Hon'ble Supreme Court in the case of Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, , it can no longer be open to doubt that even in respect of matters not falling under the provision of under order XXXIX of the CPC it would be within the competence of the Court when the interest of justice so requires to make an appropriate order in the exercise of its inherent powers.

46. We are of the view that in a situation as is brought on record in the present case as indicated herein-above, it is the bound en duty of the court to preserve the property of the vest organisation of the Society vesting " in it or lying with it is trust, specially when the real issues in regard to the nomination in question being legally operative and effective and further about the validity of the Constitution of the alleged Committees of Management claimed to have been constituted on 27-10-92 and 11-4-92 have yet to be decided on merits on the evidence which may be led in the case. With this end in view some arrangement is required to be made so that the Society may function smoothly till the suit is finally decided and the questions involved therein may be finally adjudicated upon and further consequent thereupon a valid Committee of Management is constituted in accordance with the scheme underlying the byelaws of the Society.

47. Taking into consideration the peculiar facts and circumstances of the present case and the confidence of the members of the "Sarveshwari Samooh" Society reposed in Sri Sidharth Gautam, defendant No. 1 to which a reference has already been made above and further the finding recorded by the trial Judge to

the effect that the defendant No. 1 had factually assumed the office of the President as claimed by him which finding does not appear to be vitiated in law, we are of the opinion that for the time being he may be allowed to continue to hold the office of the President subject to the conditions and directions indicated hereinafter.

48. In view of our conclusions indicated hereinbefore, this appeal succeeds in part. The interlocutory order of "status-quo" in the terms as granted by the trial court in the order under appeal is set aside. It is, however, directed that the Society "Sarveshwari Samooh" Varanasi shall be run and managed in accordance with the majority decision of a governing body having at least 13 members selected out of the duly elected "Sanrakshaks" in accordance with the byelaws of the Society, with the defendant no, 1 as its President, subject to the supervision and control of the trial court. The quorum of the meeting of this governing body shall be eight. The defendant No. 1 as well as the governing body shall stand restrained from transferring without the previous approval of the court any immovable property by way of mortgage, charge, sale, gift exchange, lease, irrevocable licence etc. Further,, no expenditure out of the money belonging to the Society or lying in trust with it shall be incurred except in accordance with the majority decision of the aforesaid governing body. This arrangement shall continue till the disposal of the suit.

49 The trial court is, however, directed to dispose of the suit finally as expeditiously as possible.

50. There shall be no order as to costs.

51. Before parting with this judgment we make it clear that the views expressed and observations made herein above are only with reference to the stage of the proceedings and should not, in any manner, be deemed to imply or mean reflection or comments on the merits of the case to be finally adjudicated upon by the trial court.