

(2012) 09 UK CK 0038
In the Uttarakhand High Court
Case No : Civil Revision No. 79 of 2012

Swami Sandhyapuri Trust, Rishikesh, District Dehradun and another APPELLANT

Vs

Swami Maheshwaanand disciple Swami Prakashanand and 10 others RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2012) 09 UK CK 0038

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : Siddharth Singh, for the Appellant;

Judgement

Hon"ble B.S. Verma, J.

(CLMA 10236/2012)

1. This revision is directed against the order dated 7-9-2012 passed by 1st Addl. District Judge, Rishikesh in O.S. No. 11 of 2006 Swami Maheshwaranand and another vs. Swami Sandhyapuri Trust and others, whereby the application 95-C filed by plaintiff No. 1 to substitute the legal heir of plaintiff No. 2, has been allowed. Perusal of record shows that Swami Maheshwaranand and Hardayal Singh had filed a suit U/S 92 C.P.C. against revisionist No. 1/defendant No. 1 and other trustees. After grant of permission to institute and pursue the suit U/S 92 C.P.C. written statement was filed. During the pendency of the suit plaintiff No. 2 Hardayal Singh had expired on 22-8-2011 and plaintiff No. 1 moved application 95-C for substitution of son of deceased plaintiff No. 2. The trial court vide impugned order dated 7-9-2012 has allowed the substitution application.

2. Learned counsel appearing on behalf of the revisionist has contended that the suit filed U/S 92 C.P.C. is a suit of special nature and is filed in public interest and the provision of Order 22 C.P.C. is not applicable. On the death of one of the two

plaintiffs, other can continue the suit. Reliance has been placed on the judgment of Abdul Satar Sait vs. Kunhu Moidu and others, reported in AIR 1953 TRA CO. 390 (Vol. 40, C.N. 153).

3. I have gone through the above cited case. It has been observed in the cited case that where the suit filed U/S 92 C.P.C. filed by two plaintiffs, one of the plaintiffs dies, other can continue the suit. Provisions of Order 22 C.P.C. cannot be availed by representative of deceased. It is only by virtue of Order 1 Rule 10(2) C.P.C. that the court, if at all, can implead other persons as parties. Representative of deceased must prove his interest in the suit. The matter has to be tried and decided and mere allegation in a petition advancing claim is not prima facie proof of his interest in the trust.

4. The present suit has been filed U/S 92 C.P.C. and plaintiff No. 2 has died during the pendency of suit. The plaintiff No. 1 filed application for substitution of representative of plaintiff No. 2. In the application nowhere it has been averred that the representative of deceased plaintiff has any interest in the suit property and simply prayer was made that the deceased plaintiff had left behind him Surendra Singh, his sole representative, therefore, he be substituted as co-plaintiff in the suit. Since the suit U/S 92 C.P.C. has been filed in respect of trust property and the representative of deceased plaintiff has not prima facie proof of his interest in the trust property, therefore, in view of the principle of law laid down in the case of Abdul Satar Sait vs. Kunhu Moidu and others, (supra), till the next date of listing the operation of the impugned order passed on application 95-C is stayed. However, it is clarified that the suit be continued on behest of plaintiff No. 1, as has been held in the above cited judgment.

5. Interim relief application stands disposed of.

6. Issue notices to the respondents. Apart of normal mode of service revisionist is given liberty to serve plaintiff No. 1/respondent No. 1 Dasti. List this revision in the week commencing 29-10-2012.