
(2010) 09 UK CK 0084
In the Uttarakhand High Court
Case No : A.O. No. 91 of 2008

Swami Sri Prakash

APPELLANT

Vs

Sri Awadoot Madalshram Prachin and Others

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2010) 3 UC 1679

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Judgement

Sudhanshu Dhulia, J.—Heard learned Counsels for both the parties.

2. This appeal from order arises out of an order dated 3.12.2007 passed by the learned District Judge, Haridwar in Misc. Case No. 22 of 2006 Swami Sri Prakash and Ors. v. Sri Awadoot Mandal Ashram and Ors. dismissing the application of the applicant/plaintiff for leave of the Court to file a Suit u/s 92 of C.P.C.

3. The Court below after inviting the objection including the objection from respondent Nos. 1 and 2, which are also represented before this by Mr. Siddharth Singh, Advocate rejected the application for grant of leave on the ground that there is not enough evidence moved by the prospective plaintiff/appellant that the respondents are disposing of the property of the "public trust". Hence, the leave was not granted. This order has been challenged by the plaintiff/appellant before this Court by means of this A.O.

4. Learned Counsel for the plaintiff/appellant says that there has been no application of mind by the learned Court below on the vital and necessary aspects for grant of leave to appeal, inasmuch as, the Court below has not taken into account as to whether the property in fact belongs to a trust but it has been rejected simply on the ground that there was not enough evidence that the property is being dicapitated by the respondents. This could not be the ground for rejecting the application for leave of the Court to file a suit u/s 92 of C.P.C.,

as all this is a subject matter of appreciation in trial.

5. Respondent Nos. 1 and 2 is represented by Mr. Siddharth Singh, Advocate, who says that the property is not a "public trust" but it is a "society", therefore, Section 92 of C.P.C. is not applicable in the present case. However, this statement has been made for the first time only before this court. It is not apparent from the record that this was the ground on which the grant of leave has been denied by the Court below.

6. Therefore, the order dated 3.12.2007 passed by the learned District Judge, Haridwar is set aside. The matter is remanded back to the Court below, who shall have a fresh look into the matter and after hearing the objections of respondent Nos. 1 and 2 would give a finding on it and in case there is a finding reached by the Court that it is indeed a public trust, he shall further proceed with the matter. It will be open for the plaintiff/appellant to apprise the Court below about the settled position of law and as to what should be the necessary consideration before the Court to proceed in a matter u/s 92 of C.P.C.

7. With the aforesaid directions, the instant AO is disposed of. No order as to costs.