

(1991) 08 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 52 of 1979

Sharomini Gurdwara
Parbandhak
Committee

APPELLANT

Vs

Mohinder Kaur

RESPONDENT

Date of Decision: Aug. 9, 1991

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Sikh Gurdwaras Act, 1925 - Section 10, 34(1), 34(2), 8

Citation: (1992) 2 ILR (P&H) 280

Hon'ble Judges: S.S. Grewal, J; G.R. Majithia, J

Bench: Division Bench

Advocate: Gurbachan Singh, for the Appellant; T.S. Mangat, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Grewal, J.

This appeal is directed against the order of the Sikh Gurdwara Tribunal, Punjab, dated 28th November, 1978, whereby, holding that the impugned order of the Tribunal dated 18th December, 1963 was not a nullity and that application for setting aside the order of dismissal u/s 151 of the CPC was incompetent and that order dated 20th September, 1974 dismissing Civil Misc. No. 213 of 1974 operates as res judicata, Civil Misc. No. 392 of 1978 filed by the Shiromani Gurdwara Parbandhak Committee (hereinafter referred to as the S.G.P.C.) was dismissed.

2. In brief, facts relevant for the disposal of this petition are that Mahant Bishan Dass filed composite petition under Sections 8 and 10 of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as the Act) asserting that the institution in dispute, namely, Gurdwara Sahib Dharamshala Androoni situated in the revenue estate of Jalaldiwal. Tehsil Barnala, District Sangrur. belonged to Udasi sect was a

Dharamshala and not a Sikh Gurdwara. Petition No. 259 of 1963 relates to claim u/s 8 of the Act. The Tribunal issued notice to Bishan Dass for 28th August, 1963 and as per report of Process Server Bishan Dass died on 2nd of February, 1963. The case was adjourned to 28th October, 1963 on which date Dial Dass moved an application for being impleaded as legal representative of Mahant Bishan Dass and notices of the said application were issued to the parties concerned including S.G.P.C. for 18th December, 1963. Dial Dass did not appear before the Tribunal on that day and the petition was dismissed in default. On 28th January, 1974, S.G.P.C. filed Civil Misc. application No. 213 of 1974 alleging that the impugned order dated 18th December, 1963 dismissing the petition u/s 8 of the Act was without jurisdiction. It did not exist in the eye of law, was a nullity and the Tribunal was legally bound to finally dispose of the main petition u/s 8 of the Act. Notice of this application was sent to Dial Dass and as per report on the summons Dial Dass was already dead. Thereafter S.G.P.C. filed Civil Misc. application No. 241 of 1974 on 11th March, 1974 for impleading Mohinder Kaur widow of Dial Dass as his legal representative and subsequently she was allowed to be impleaded as legal representative of Dial Dass Another Civil Misc. application No. 248 of 1974 was filed before the Tribunal, and, on its basis four minor daughters of Dial Dass, namely, Surinder Pal Kaur, Amarjit Kaur. Paramjit Kaur and Inderjit Kaur were also impleaded as legal representatives through their mother Mohinder Kaur. All the legal representatives of Dial Dass pleaded that the order of the Tribunal dated 18th December, 1963 is perfectly legal and valid; it did not suffer from inherent jurisdiction and the application was time barred. On 20th September, 1974, S.G.P.C. filed Misc. application No. 280 of 1974 alleging that after the death of Bishan Dass his legal representatives were not brought on the record in time; that the main petition had already abated and that application No. 213 of 1974 filed on behalf of the S.G.P.C. for restoration of the said application may be allowed to be withdrawn. On the statement of counsel for S.G.P.C. dated 20th September. 1974 Civil Misc. No. 213 of 1974 was dismissed as withdrawn. Second application No. 392 of 1978 u/s 151 of the CPC was filed by the S.G.P.C. for restoration of the main petition, which was dismissed by the Tribunal on 18th December, 1963. It was mainly contended in this petition that the order dismissing the petition u/s 8 of the Act was without jurisdiction and a nullity and that Tribunal was legally bound to decide the main petition on merits. This petition was contested on behalf of Mohinder Kaur and others on the ground that the said order was legal and valid and was not a nullity and that the application was barred by limitation.

3. From the pleadings of the parties, the following issues were framed by the Tribunal:

1. Whether this application u/s 151. Code of Civil Procedure, for setting aside the order of dismissal for default dated 18th December, 1963 of petition No. 259 of 1963 is incompetent ? OPR

2. Whether the order dated 20th September, 1974, whereby Civil Miscellaneous No. 213 of 1974 was dismissed, operates as res judicata and the present application is incompetent? O.P.R.

3. Whether this Civil Miscellaneous application is not competent for the reasons given in para 3 of the preliminary objections raised in the written statement ? O.P.R.

All these issues were decided against the S.G.P.C. and prayer for restoration of the main petition (dismissed in default on 18th December, 1963) was dismissed.

4. The learned Counsel for the parties were heard.

5. The learned Counsel for the Respondent raised the preliminary objection that the impugned order passed by the Tribunal is not a final order. It had not determined the rights of the parties on merits with regard to real matters in controversy and as such no appeal against the said order is maintainable. There is considerable merit in the contention raised by the learned Counsel for the Respondent. Under Sub-section (1) of Section 34 of the Act only party aggrieved by a final order passed by Tribunal determining any matter decided by it under the provisions of the Act, is entitled to file appeal. The impugned order, in the instant case, is not a final order. Nor the Tribunal had determined the rights of the parties concerning real matters in controversy on merits after affording adequate opportunity to the parties to lead evidence. The impugned order, in the instant case, was passed as far back as 18th December, 1963. Thereafter application moved by the S.G.P.C. for restoration of the main petition and for setting aside the order of dismissal of the main petition in default, too has been dismissed as withdrawn. The second application for this purpose too has been dismissed. The present appeal has been filed against the order of dismissal of the second application referred to above.

6. In view of the specific prohibition contained in Sub-section (2) of Section 34 of the Act, no appeal or application for revision lies against the order of the Tribunal which is not a final order as contemplated u/s 34(1) of the Act. We find support in our view from the Full Bench decision of this Court in Bhagwan Singh v. Shiromani Gurdwara Parbandhak Committee Amritsar ILR 1978 (2) 280, where in relying upon the judgment of the apex Court in [Jethanand and Sons Vs. The State of Uttar Pradesh](#), it was held that none of the orders passed by the Tribunal allowing the amendment of the Appellant's petition was a final order within the meaning of Section 34(1) of the Act and that the Appellant cannot, in the circumstances of this case, cross even the second hurdle provided by Section 34(1) of the Act, namely, that the order against which an appeal lies must be one whereby any matter has been determined under the provisions of this Act.

7. It was further observed in the aforecited authority in Bhagwan Singh's case that the decision to permit amendment or not to do so is one under the CPC as applied to the proceedings under the Act. It is a mere procedural matter and does not by itself decide the real matter in controversy between the parties.

8. For the foregoing reasons, we are of the considered view that no appeal lies against the impugned order passed by the Tribunal before this Court under the Act. The present appeal is not maintainable and is dismissed as such with no order as to costs.