

(2000) 12 P&H CK 0164

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2148 of 1999

Mahant Avtar Singh

APPELLANT

Vs

Joginder Singh

RESPONDENT

Date of Decision: Dec. 5, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 3, 92

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Mr. Ashok Singla, for the Appellant; Mr. V.K. Kataria, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Anand, J.

This is a Civil Revision and has been directed against the order dated 10.2.1999 passed by the Court of Additional District Judge, Muktsar, who, dismissed the application of the petitioner for the dismissal of the suit filed u/s 92 C.P.C.

2. Originally the suit was instituted u/s 92 C.P.C. by Shri Kulwant Singh and Joginder Singh against the present petitioner, seeking the removal of the petitioner from the office of Mahantship and for appointment of anew Mahant of the institution. An application was filed by the defendant that the suit was not maintainable. It was mentioned in the application that Kuhvant Singh had died. Hermit Singh and Sukhwant Singh LRs. of Shri Kulwant Singh made an application under Order 22 Rule 3 C.P.C. for impleading them as parties to me suit and that application was also dismissed on 5.8.1998. The right of sue does not survive. Thus, Shri Joginder Singh plaintiff cannot continue with the suit.

3. Notice of the application was given to the respondents who filed the reply and denied the allegations. The learned Additional District Judge for the reasons given in paras No. 4 and 5 of the impugned order, dismissed the application of the petitioners. Hence the present revision.

4. I have heard the learned Counsel for the parties and with their assistance have gone through the record of the case.

5. Section 92 of the CPC lays down that in the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court, may institute a suit, whether contentious or not, in the principal Civil Court or original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree.

6. The remaining portion of this Section need not be reproduced as it is not necessary because the line which is important for the adjudication of the controversy is "two or more persons having an interest in the trust".

7. The learned Counsel appearing on behalf of the petitioners submitted that the right to institute the suit and right to continue with the suit, are not two different things and these two rights cannot be segregated or separated. He submitted that with the death of Shri Kulwant Singh, the suit cannot be continued by Shri Joginder Singh especially when the application filed by the L.Rs. of Kulwant Singh under Order 22 Rule 3 C.P.C. was declined by the Court on 5.8.1998 and the said order has become final.

8. On the contrary learned Counsel appearing on behalf of the respondents submitted that the requirement of Section 92 C.P.C. is only that two persons should institute the suit but the suit can continue in the absence of one of them. There is a merit in the contention raised by the counsel for the respondents. The reading of Section 92 C.P.C. which I have quoted above, would show that the requirement of the law is that this type of suit can be instituted either by the Advocate General or two or more persons having an interest in the trust. In my opinion the right to institute the suit and right to continue with the suit are two different things. Otherwise the Legislature in his wisdom could say that presence of two or more persons is necessary for the continuation and for the institution of the suit. Let us develop this proposition further. If the suit is instituted by two persons and one person makes an application before the Court that his name may be deleted as he is not interested to prosecute the suit, would in these circumstances, such a request can be allowed? The answer of this court is in the negative. Let us further develop this point. Two persons institute a suit. Subsequently, one person colludes with the defendant for some reason or the other. Even in that eventuality the suit cannot fail because the scheme of Section 92 C.P.C. is that such like suits are suits in the shape of representative capacity and property of the Trust should not be misappropriated by any person. This point came up for consideration before the different High Courts. In AIR 1942 Bom 125 it was observed by their Lordships that suit under this

Section must be instituted by two or more persons having an interest in the trust but the necessity of two persons suing is restricted to the institution of the suit. There is nothing which requires that all the plaintiffs to whom sanction has been given for filing the suit should, after filing the suit, continue actively to prosecute the suit (see 1942 Sind 137 (DB). Further it has been observed by High Court in AIR 1915 Oudh 181 that surviving plaintiff-appellant alone can carry on the appeal in the suit which was originally instituted by two or more persons as required. Again in [A.V.M. Ramaswami Chettiar Vs. V.M. Muthukaruppan Chettiar and Others](#), it was observed that where a suit is instituted by two or more persons interested, the joining of a person also who is not interested will not affect the institution of the suit. (Note :- The judgments have been quoted from the commentary of AIR Manual Vol. 5 page 12 Note 15).

In this view of the matter, I do not see any merit in this revision and the same is hereby dismissed with no order as to costs.

9. Revision dismissed