Sri Dadu Dayal Mahasabha vs Sukhdev Arya And Another on 17 November, 1989

Equivalent citations: 1989 SCR, SUPL. (2) 233 1990 SCC (1) 189, AIRONLINE 1989 SC 43, 1990 ALL CJ 189, 1990 (1) SCC 189, (1989) 2 ALL WC 1503, (1990) 2 LAND LR 236, (1990) 1 REN CR 38, (1990) 1 CIV LJ 167, (1990) 1 MAH LR 935, (1990) 1 BLJ 590, (1989) 4 JT 382, (1990) 1 LJR 1, (1990) RD 47, (1990) 1 RRR 16, (1990) REVDEC 47, (1989) 4 JT 382 (SC)

Author: L.M. Sharma

Bench: L.M. Sharma

PETITIONER:
SRI DADU DAYAL MAHASABHA

Vs.

RESPONDENT:
SUKHDEV ARYA AND ANOTHER

DATE OF JUDGMENT17/11/1989

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
RAMASWAMI, V. (J) II

CITATION:
1989 SCR Supl. (2) 233 1990 SCC (1) 189
JT 1989 (4) 382 1989 SCALE (2)1193

ACT:
Civil Procedure Code, 1908: Sections 115 and 15I--Civil Court-Invoking of inherent power to correct its own proceedings--When it is misled by any of the parties--Revision--High Court could intervene when trial court failed to exercise jurisdiction under Section 151
Practice and Procedure.' Courts--When misled by any of the parties--Could invoke inherent power to correct its own proceedings.

HEADNOTE:
The appellant, a registered society, instituted a suit

through its Secretary in respect of an immovable property. Afterwards, the election of the office bearers for the Society was held and one 'X' claiming to be the Secretary of the Society filed an application for withdrawing the suit and the trial court allowed the same.

In the subsequent election, one 'Y' was elected as Secretary and he filed an application for recalling the order of withdrawal and for restoring the suit. The application was contested and the trial court rejected the application. The appellant challenged the order before the High Court by way of a petition under section 115 CPC. The High Court observed that the trial court had committed several serious errors in deciding the question as to who was the elected Secretary of the Society on the relevant date in favour of the respondent but held that the mistake could not be corrected.

This appeal by special leave, is against the High Court's judgment.

On behalf of the appellant, it was argued that the trial court failed to appreciate that 'X' was not the elected Secretary of the Society, as was held by the Registrar of Cooperative Societies, and that 'X' did not also succeed before the High Court in this regard. And hence, he was not competent to withdraw the suit. It has been contended that the error committed by the trial court ought to have been rectified by the High Court.

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The respondents argued that the only remedy available to the appellant was to file a fresh suit. It was contended that the High court rightly did not decide the dispute finally regarding election of 'X' and left it to be settled by the Civil Court.

Allowing the appeal and remitting the matter to the trial court, this Court,

HELD: 1.1 The position is well established that a court has inherent power to correct its own proceedings when it is satisfied that in passing a particular order it was misled by one of the parties. [237D]

1.2 If a party makes an application before the Court for setting aside the decree on the ground that he did not give his consent, the court has the power and duty to investigate the matter and to set aside the decree if it is satisfied that the consent as a fact was lacking and the court was induced to pass the decree on a fradulent representation made to it that the party had actually consented to it. However, if the case of the party challenging the decree is that he was in fact a party to the compromise petition filed in the case but his consent had been procured by fraud, the court cannot investigate the matter in the exercise of its inherent power, and the only remedy to the party is to institute a suit. 1237F-G]

1.3 So far as the finding of the trial court that X was the elected Secretary of the appellant Society with authori-

ty to withdraw the suit is concerned, the same suffers from several errors and requires reconsideration. Even in the view of the High Court that is the position, but it declined to exercise its revisional power on the assumption that it had no jurisdiction to do so. The courts below were, therefore, not right in holding that the application of the appellant invoking the inherent jurisdiction of the court was not maintainable. If the appellant's case is factually correct that X was not its elected Secretary and was, therefore, not authorised to withdraw the suit, the prayer for withdrawing the suit was not made on behalf of the appellant at all and the impugned order was passed as a result of the court being misled. Such an order cannot bind the appellant and has to be vacated. High Court should have intervened in its revisional power on the ground that the trial court had failed to exercise ajurisdiction vested in it by law. [238F-G; D-E]

Sadho Saran Rai and Ors. v. Anant Rai and Ors., AIR 1923 Patna 483; Vilakathala Raman v. Vayalil Pachu, 27 Madras Law Journal Reports 172 and Basangowda Hanmantgowda Patil and Anr. v.

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Churchugirigowda Yogangowda and Anr., I.LR 34 Bombay 408, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3901 of 1981.

From the Judgment and Order dated 22.1.1987 of the Rajasthan High Court in S.B. Civil Revision No. 672 of 1983. V.M. Tarkunde and L.K. Pandey for the Appellant. J.P. Goyal, R.K. Gupta, K.K. Gupta, (NP) and Rajesh, (NP) for the Respondents.

The Judgment of the Court was delivered by SHARMA, J. This appeal by special leave is directed against the judgment of Rajasthan High Court dismissing a civil revision application filed by the appellant in the following circumstances.

2. The appellant, a registered Society, filed the suit out of which this appeal arises in the court of the District Judge, Jaipur City in respect of an immovable property through its the then Secretary which was numbered as Suit No. 11 of 1973. The counsel engaged by the appellant were Sri Satya Narain Sharma and Sri Shyam Bihari Agarwal. The suit was later transferred to the court of Additional District Judge No. 1, Jaipur City where it was renumbered as Suit No. 116 of 1974. After the institution of the suit, an election of the office bearers of the Society was held on 1.6.1973 and according to the appellant's case one Sri Laxman Das Swami was elected as the Secretary. On 4.9.74 a prayer for withdrawing the suit was made by one Hari Narain Swami through another lawyer claiming to have been elected as the Secretary of the Society. In support of his claim of having been elected as the Secretary of the Society Hari Narain Swami produced certain documents on the basis of which the

Trial Court allowed the suit to be withdrawn. According to the case of the appellant, Hari Narain Swami was not elected as the Secretary and had no locus standi to withdraw the suit. Since no notice was given of his applica- tion for withdrawal of the suit either to the then Secretary Laxman Das Swami or to the learned advocates Sri Satya Narain Sharma or Sri Shyam Bihari Agarwal, through whom the suit had been instituted, none of them had any knowledge of the order passed by the court. Later, in the next election, another Secretary named Jeeva Nand Swami was elected, and when he learnt about the fate of the suit, an application was filed for recalling the order of withdrawal and restoring the suit to its file. The prayer was contested and the trial court rejected the application. The appellant Society challenged the order before the High Court by a petition under s. 1 15 of the Code of Civil Procedure which was also dismissed by the impugned judgment.

3. The trial court after holding that the appellant's application filed under s. 15 1 of the Code of Civil Proce- dure, was not maintainable, proceeded further to consider the question as to who was the duly elected Secretary of the Society, entitled to prosecute or withdraw the suit and accepted the case of Hari Narain Swami. The High Court has agreed with the trial court that the application under s. 15 1 of the Code of Civil Procedure was not maintainable. While agreeingwith the argument of the appellant that the trial court had committed several serious errors in deciding the question as to who was the elected Secretary of the Society on the relevant date in favour of the respondent the High Court observed that the mistake could not be corrected in the present situation.

4. It has been contended by Mr. Tarkunde, the learned counsel for the appellant, that the application under s. 15 1 of the Code of Civil Procedure, for restoration of the suit was maintainable and the error committed by the trial court while recording the finding on the merits of the case was such which the High Court ought to have rectified. The learned advocate representing the respondents has strenuous- ly argued that the trial court has no jurisdiction to recall its order permitting the withdrawal of the suit under its inherent power and the High Court has rightly held that the only remedy of the appellant is to file a fresh suit. The finding recorded by the trial court on the merits of the case has also been relied upon.

5. The learned counsel for the appellant has challenged the correctness of the trial court's finding in favour of the respondent's case that Hari Narain Swami had been duly elected as the Secretary of the appellant Society and had, therefore, full authority to withdraw the suit, on several grounds. Since we are of the view that the case has to go back to the trial court for reconsideration of the evidence on this point, we do not propose to deal with the argument on behalf of the appellant in detail, except mentioning one of them. It has been stated that a dispute, relating to the election of the Secretary of the Society, had arisen between the parties which ultimately went before the Registrar of the Cooperative Societies, who decided the matter in favour of Laxman Das Swami and against Hari Narain Swami. A writ petition filed thereafter by Hari Narain Swami before the High Court (registered as C.W.P. No. 1406 of 1975) was dismissed. It is said that the trial court failed to appre- ciate the impact of the judgments of the Registrar and the High Court which has vitiated' the impugned decision. In reply, it has been argued by the learned counsel for the respondents that the High Court in C.W.P. No. 1406 of 1975 did not decide the dispute finally and left it to be settled by the civil court. Beyond pointing out that even according to the impugned judgment of the High Court the errors in the judgment of the trial court are serious, we do not consider it appropriate to

deal in detail with the arguments of the learned counsel, as the disputed question has to go back for reconsideration.

6. The main question which requires consideration, however, is whether the trial court has jurisdiction to cancel the order permitting the withdrawal of the suit under its inherent power, if it is ultimately satisfied that Hari Narain Swami was not the Secretary of the appellant Society and was, therefore, not entitled to withdraw the suit. The position is well established that a court has inherent power to correct its own proceedings when it is satisfied that in passing a particular order it was misled by one of the parties. The principle was correctly discussed in the judg- ment in Sadho Saran Rai and Others v. Anant Rai and Others, AIR 1923 Patna 483, pointing out the distinction in cases between fraud practised upon the court and fraud practised upon a party.

7. Let us consider the cases in which consent decrees are challenged. If a party makes an application before the Court for setting aside the decree on the ground that he did not give his consent, the court has the power and duty to investigate the matter and to set aside the decree if it is satisfied that the consent as a fact was lacking and the court was induced to pass the decree on a fraudulent repre- sentation made to it that the party had actually consented to it. However, if the case of the party challenging the decree is that he was in fact a party to the compromise petition filed in the case but his consent has been procured by fraud, the court cannot investigate the matter in the exercise of its inherent power, and the only remedy to the party is to institute a suit. It was succinctly summed up in the aforementioned case that the factum of the consent can be investigated in summary proceedings, but the reality of the consent cannot be so investigated. The principle has been followed in this country for more than a century. In Vilakathala Raman v. Vayalil Pachu, 27 Madras Law Jour-

nal Reports 172, the trial court had vacated its previous order regarding satisfaction of decree on the ground that the same was obtained by the judgment debtor's fraud on the court. The High Court, while confirming the order, said that in the exercise of inherent power under s. 15 1 of the Code of Civil Procedure a court can vacate an order obtained by fraud on it. Reliance had been placed on an old decision of Bombay High Court of 1882 and a Madras decision of 1880. In Basangowda Hanmantgowda Patil and Others v. Churchigirigowda Yogangowda and Another, I.L.R. 34 Bombay 408, the defendant applied to the court to set aside a compromise decree on the ground that he had not engaged the lawyer claiming to be representing him and had not authorised him to compromise the suit. The court accepted his plea and ruled that it is the inherent power of every court to correct its own pro- ceedings when it has been misled. Similar was the view of the Calcutta High Court in several decisions mentioned in Sadho Saran's case (supra). The ratio has been later fol- lowed in a string of decisions of several High Courts. The same principle applies where a suit is permitted to be withdrawn on the basis of a prayer purported to have been made on behalf of the plaintiff. The courts below were, therefore, not right in holding that the application of the appellant invoking the inherent jurisdiction of the court was not maintainable. If the appellant's case is factually correct that Hari Narain Swami was not its elected secretary and was, therefore, not authorised to withdraw the suit, the prayer for withdrawing the suit was not made on behalf of the appellant at all and the impugned order was passed as a result of the court being misled. Such an order cannot bind the appellant and has to be vacated. The trial court was thus clearly wrong in dismissing the appellant's

application as not maintainable, and the High Court should have inter- vened in its revisional power on the ground that the trial court had failed to exercise a jurisdiction vested in it by law.

8. So far the finding of the trial court that Hari Narain Swami was not the elected Secretary of the appellant Society with authority to withdraw the suit is concerned, the same suffers from several errors and requires a recon- sideration. Even in the view of the High Court that is the position, but it declind to exercise its revisional power on the assumption that it had no jurisdiction to do so. We, therefore, allow the appeal, set aside the impugned judg- ments of the trial court and the High Court and r. emit the matter to the trial court for reconsideration of the case on merits. The parties shall be allowed to lead further evi- dence in support of their cases. The costs will abide the final result in the litigation.

G.N. Appeal allowed.