

BHUPINDER SINGH

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v.

JOGINDER SINGH (D) BY LRS. & ORS.

(Civil Appeal No. 6067 of 2010)

SEPTEMBER 18, 2019

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[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]

Code of Civil Procedure, 1908 –s.92 – Case of the plaintiffs-respondents was that father of the appellant-defendant was Mohtmim of the Gurudwara and was looking after the same – According to the plaintiffs, a committee for manning the Gurudwara was set up and it wanted a scheme to be framed in terms of s.92 for proper management of the Gurudwara in question – Case of the appellant inter alia was that the Gurudwara was private property, earlier owned by his father and now owned by him and the suit u/s.92 was not maintainable – Application was filed seeking leave of the Court to institute the suit u/s.92, but no orders were passed – Plea of the appellant is that since no orders were passed on the application for grant of leave, the entire proceedings in the suit are vitiated and the orders passed therein and subsequently in the appellate proceedings need to be set aside – Held: s.92 clearly indicates that either a suit under the provision can be filed by the Advocate General or by two or more persons having interest in the trust and having obtained the leave of the Court – In every suit filed u/s.92, the grant of leave is a necessary pre-requisite before the suit can be said to be properly instituted – In the present case there is an unusual situation where the appellant contested the suit without raising the plea that leave of the Court was not granted and submitted to the jurisdiction of the Trial Court without any objection – Appellant was aware of such provision with regard to grant of leave because in an earlier suit filed against the appellant he took that objection and the suit was dismissed on this ground – However, in the second round of litigation, the appellant did not take this defence – Further, case of the appellant himself was that his father was Mohtmim of the Gurudwara – A Mohtmim is in the nature of Shebait/Manager of the Gurudwara and cannot be the owner of the Gurudwara – Admittedly, about 14 kanals of land was donated by the villagers to the Gurudwara

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- A *therefore, it is a public Gurudwara – Though legally the appellant is right that the suit could not have been instituted without taking leave yet, in the peculiar facts and circumstances of the case, the appeal is not being continued – Present case decided in peculiar facts and circumstances, not be treated as precedent.*

B **Dismissing the appeal, the Court**

HELD:1.1 A bare perusal of Section 92, CPC clearly indicates that either a suit under the provision can be filed by the Advocate General or by two or more persons having an interest in the trust and having obtained the leave of the Court.

- C Grant of leave is a necessary pre-requisite before a suit under Section 92, CPC can be entertained. In an application filed under Section 92, CPC seeking leave to institute a suit, normally a notice should be issued to the other side before passing orders thereupon. However, that is not absolutely necessary and in an emergent situation, the Court can grant leave even without issuing notice to the other side but then the respondent has a right to file an application for revocation of the leave granted. In every suit filed under Section 92, CPC, the grant of leave is necessary before the suit can be said to be properly instituted. There is an unusual situation where the defendant contested the suit without raising the plea that leave of the Court has not been granted. Not only that, both sides led evidence and the matter was decided on merits, the appellant submitted to the jurisdiction of the Trial Court without any demur and objection. The appellant was aware of such a provision with regard to grant of leave because in an earlier suit filed against the appellant he had taken an objection that leave had not been granted and that suit was dismissed on this short ground. However, in the second round of litigation, the appellant unfortunately chose not to take this defence. The courts below have come to a finding of fact that the Gurudwara is a public place of worship. In fact, the case of the appellant/ defendant himself was that his father was Mohtmim of the Gurudwara. A Mohtmim is in the nature of Shebait or Manager of the Gurudwara and cannot be the owner of the Gurudwara. About 14 kanals of land was donated by the villagers to the Gurudwara which fact has been admitted by the appellant in his cross examination. Therefore, it is a public Gurudwara. The Trial Court has framed a proper scheme for

management of the Gurudwara in which an elected body has to take care of the management of the Gurudwara and this elected body will consist of people belonging to the village. Keeping in view the aforesaid facts, though legally the appellant is right that the suit could not have been instituted without taking leave yet in the peculiar facts and circumstances of the case, the Court is not inclined to continue this appeal. This case has been decided in peculiar facts and circumstances and shall therefore not be treated as precedent. [Paras 5-11] [634-G-H; 636-A-C-F-H; 636-A-E]

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R.M. Narayana Chettiar & Another. v. L. Lakshmanan Chettiar & Others. (1991) 1 SCC 48 : [1990] 2 Suppl. SCR 266 – relied on.

Vidyodaya Trust v. Mohan Prasad R. & Ors. (2008) 4 SCC 115 : [2008] 3 SCR 569 – referred to.

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| <u>Case Law Reference</u> | | |
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| [1990] 2 Suppl. SCR 266 | relied on | Para 6 |
| [2008] 3 SCR 569 | referred to | Para 6 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6067 of 2010.

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From the Judgment and Order dated 23.07.2009 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 3598 of 1998.

Shish Pal Laler, Sonit Sinhmar (for Ravi Panwar), Advs. for the Appellant.

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Manoj Prasad, Sr. Adv., Harinder Mohan Singh, Ms. Purnima, Ashutosh Dubey, Ms. Sabana, Vinod Mehta, Advs. for the Respondents.

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.

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1. The respondents filed a suit in respect of Gurudwara in village Pilkhanji Tehsil and District Ambala. It was alleged that the Gurudwara is a place of public worship where free access to the public is allowed. It was further alleged that father of Bhupinder Singh, defendant No.2 (the appellant herein) was a Mohtmim of the Gurudwara and looking after the same.

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- A 2. According to the plaintiffs, a committee for manning the Gurudwara was set up in which plaintiff No.1 was the President, plaintiff No.2 was the Secretary and plaintiff Nos.3 and 4 were members of the Managing Committee. It is alleged that after the death of Tarlok Singh, his son was not managing the Gurudwara properly and therefore the Committee wanted a scheme to be framed in terms of Section 92 of the Code of Civil Procedure, 1908, (CPC) for proper management of the Gurudwara in question.
- B 3. The case of the appellant herein was that the Gurudwara was a private property earlier owned by his father and now owned by him.
- C It was alleged that public has no right to access the Gurudwara and the suit under Section 92 was not maintainable.
- D 4. Unfortunately, though an application was filed for seeking leave of the Court to institute the suit under Section 92, CPC, no orders appear to have been passed on the said application. Section 92, CPC reads as follows:
- “92. Public charities.-
- (1) 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 of 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-
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- (g) settling a scheme. . . .”
- G 5. A bare perusal of Section 92, CPC clearly indicates that either a suit under the provision can be filed by the Advocate General or by two or more persons having an interest in the trust and having obtained the leave of the Court. The contention raised on behalf of the appellant herein is that since no orders were passed on the application for grant of leave, the entire proceedings in the suit are vitiated and the orders

passed in the suit and subsequently in the appellate proceedings need A
to be set aside.

6. As far as the legal issue is concerned, there can be no manner of doubt that grant of leave is a necessary pre-requisite before a suit under Section 92, CPC can be entertained. This Court has held in a number of judgments that in an application filed under Section 92, CPC seeking leave to institute a suit, normally a notice should be issued to the other side before passing orders thereupon. However, that is not absolutely necessary and in an emergent situation, the Court can grant leave even without issuing notice to the other side but then the respondent has a right to file an application for revocation of the leave granted. Reference in this behalf is made to *R.M. Narayana Chettiar & Another. v. L. Lakshmanan Chettiar & Others.* [(1991) 1 SCC 48], *Vidyodaya Trust v. Mohan Prasad R. & Ors.* [(2008) 4 SCC 115]. In *R.M. Narayana's* case (supra), this Court held as follows:-

“17. A plain reading of Section 92 of the Code indicates that leave of the court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule of caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave under Section 92 to institute a suit. ...”

7. Learned counsel for the appellant urges that in view of law laid down by this Court, it is imperative that leave must be granted before the suit is instituted. There is no quarrel with this proposition and we are not inclined to hold, as the High Court did, that leave can be presumed to have been granted. There can be no presumption of this kind in a case of this nature. We are clearly of the view that in every suit filed under Section 92, CPC, the grant of leave is necessary before the suit can be said to be properly instituted.

8. Having held so, we are faced with an unusual situation where the defendant contested the suit without raising the plea that leave of the Court has not been granted. Not only that, both sides led evidence and the matter was decided on merits, the appellant herein submitted to the jurisdiction of the Trial Court without any demur and objection.

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- A It is also clear that the appellant was aware of such a provision with regard to grant of leave because in an earlier suit filed against the appellant he had taken an objection that leave had not been granted and that suit was dismissed on this short ground. However, in the second round of litigation, the appellant unfortunately chose not to take this defence.
- B 9. The courts below have come to a finding of fact that the Gurudwara is a public place of worship. In fact, the case of the appellant/ defendant himself was that his father was Mohtmim of the Gurudwara. A Mohtmim is in the nature of Shebait or Manager of the Gurudwara and cannot be the owner of the Gurudwara. It has also come on record that about 14 kanals of land was donated by the villagers to the Gurudwara which fact has been admitted by the appellant in his cross examination. Therefore, it is a public Gurudwara. We also find that the Trial Court has framed a proper scheme for management of the Gurudwara in which an elected body has to take care of the management of the Gurudwara and this elected body will consist of people belonging to the village.

10. Keeping in view the aforesaid facts, though legally the appellant is right that the suit could not have been instituted without taking leave yet in the peculiar facts and circumstances of the case, E we are not inclined to continue this appeal.

11. The civil appeal is dismissed. This case has been decided in peculiar facts and circumstances and shall therefore not be treated as precedent.

Divya Pandey

Appeal dismissed.