# Mahant Indra Narain Das vs Mahant Ganga Ram Das And Anr. on 6 September, 1954

## Equivalent citations: AIR1955ALL683, AIR 1955 ALLAHABAD 683

## Author: Raghubar Dayal

## Bench: Raghubar Dayal

JUDGMENT

Agarwala, J.

1. This is a plaintiff's appeal arising out of a suit for a declaration that the plaintiff was the Mahant of certain temples. The facts briefly are these :

There are two temples in which three deities are installed. One temple is situated in village Atrauli Maufi and the other in village Katra Gudar. One Mahant Salig Ram Das was the Mahant and Sarbarakar of the deities of the two temples. He died on 7-10-1946. .

One Lachchman Das applied for having his name mutated in the revenue records over the property belonging to the deities. He was opposed, by one Ganga Ram Das who is one of the defendants-respondents in the present litigation. During the pendency of the mutation proceedings the revenue Court appointed a receiver to take charge of the endowed property. The receiver took possession of the property on 27-2-1947. Lachchman Das was later murdered in May, 1947, and upon his death his two chelas came forward claiming the Mahantship as successors of Lachchman Das.

One was Rameshwar Das and the other was Gobind Das, Rameshwar Das also died on 2-6-1947, and in his place the plaintiff-appellant applied for mutation on the ground that he was the successor of Rameshwar Das who alone was the successor of Lachman Das. The plaintiff's application was, however, dismissed because the revenue court held that the court had no power to implead the heirs of claimants in mutation proceedings. Upon his application for mutation being dismissed he filed the suit, which has given rise to, this appeal, in the civil court for a declaration of his title to the Mahantship of the endowment.

At this time, the appointed receiver was in possession of the property. The Assistant Collector was dealing with the mutation case, and held that he was not able to decide

> who was in possession of the property, and therefore, ordered that the receiver was to remain in possession till the title was decided by a competent civil Court.
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> Against this order Govind Das appealed to the Collector. The Collector held that as between Govind Das and Ganga Ram, Govind Das was better entitled to the property, and he, therefore, ordered mutation to be effected in his name, and he also ordered the receiver to hand over possession of the property to Govind Das. Consequently, Govind Das came into possession over this property.

2. The Civil Suit then came up for decision, and the learned Civil Judge" dismissed it on the ground that since the plaintiff was not in possession over the property his suit for a mere declaration was barred by reason of the proviso to Section 42, Specific Relief Act. The plaintiff has appealed to this Court against the decision of the learned Civil Judge, and the only point for consideration is whether the suit was barred by the proviso to Section 42, Specific Relief Act Section 42 of the Specific Relief Act with its proviso is as follows :

> "Any person entitled to any legal character or to any right as to any property, may institute a suit against any person, denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief.
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> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief that a mere declaration of title, omits to do so."

The first thing to be noted in connection with Section 42 is that it enables a person to institute a suit for a declaration as to his legal character or right to any property against a person denying or interested in denying his legal character or right.

The second thing to be noted is that the court is given a discretion to make the declaration sought and the plaintiff need not ask for any further relief. The relief being discretionary, no person can claim the declaration as of right. But, at the same time, the court being a court of justice its discretion is fettered by principles of law laid down by the courts themselves, though not by the Legislature and the discretion cannot be exercised arbitrarily, but must be exercised in accordance with the settled principles of law.

When a case, therefore, is covered by the principles already settled the court has to decide the case in accordance with those principles and has really no discretion in the matter. The third thing to be noted in connection with this section is that a relief for a declaration is not to be granted where the plaintiff "being able to seek further relief than a mere declaration of title, omits to do so".

By reading the proviso along with the main section is at once clear that the further relief contemplated in the proviso is a relief which was available to the plaintiff at the time of the institution of the suit and which he failed to pray for. If there is a change in the position of the parties during the pendency of a suit, and if by reason of this change the plaintiff becomes entitled to

seek further relief, then that is not the relief contemplated in the proviso. This point is covered by authorities and is well settled, vide : -- 'Surjan Singh v. Baldeo Prasad', 1900 All WN 172 (A); -- 'Ram Adbar v. Ram Shankar', 26 All 215 (B); -- 'Hurmat Ali Shah v. Tufail Mohammad', AIR 1935 Lah 332 (C); -- 'Meghaji Mohanji v. Anant Pandurang', AIR 1948 Bom 396 (D).

Further, by reading the last clause of the main section where it is stated that the plaintiff need, not ask for any further relief and the proviso together, it appears to us that the proviso refers to a relief not such that the plaintiff may or may not ask for it, but one which the plaintiff must seek in order to get actual and substantial relief suitable for him -- a relief which the plaintiff will have to seek by means of some subsequent suit or application in order that he may make the declaratory relief fruitful to himself.

In other words, the proviso does not seem to refer to a relief which it is not at all necessary, in view of the declaratory relief, which may be granted to him and which alone will serve his purpose quite well. Lastly, it has to be noted that the further relief which a plaintiff is bound to seek by reason of the proviso is a relief which he can obtain against the defendant or defendants to the suit and not against a third party. This was pointed out by the Privy Council in -- 'Humayun Begam v. Shah Mohammad Khan', AIR 1943 PC 94 (E). Let us now examine what the position in the present case is.

3. As already noted, on the date of the institution of the suit though the plaintiff was not in possession of the property, the defendant also was not in possession thereof. He had not even obtained a declaration in his favour from the revenue court. The property was in possession of a receiver at the date of the suit. Therefore, the plaintiff was unable to seek the relief for possession because the defendant was not in possession. Furthermore, the property being in charge of a receiver appointed by a court, must be deemed to be in possession of the receiver on behalf of the rightful owner of the property.

A receiver appointed by a court takes charge of the property as an officer of the court, and not as an agent of a party. The court appoints a receiver in order that the property may ultimately, be delivered to the person held by it or by some other competent court to be entitled to that property. Normally and usually the court decides the dispute between the parties arrayed before it, and, therefore it is, often said that the receiver holds the property for the party on the record ultimately found to be entitled to it.

But it may be that a person, who is not a party before the court appointing the receiver, may get his title declared by another competent court in a suit in which all the parties before the court appointing the receiver are impleaded. In that case the party declared to be entitled to it by the competent court would be entitled to have delivered to him possession over the property by the receiver.

The receiver was, therefore, at the date of the suit holding the property for the rightful owner including the plaintiff. It, therefore, follows that the plaintiff was entitled to sue for a mere declaration and was not "able to seek further relief" at the date of the suit as against the defendant. The change in the position of the parties during the pendency of the suit, as already noted above, did

not affect the position with regard to the right of the plaintiff to sue for a mere declaration.

4. A number of cases were cited by counsel for both the parties before us. In -- 'Kandaswami v. Vagheesam Pillai',. AIR 1941 Mad 822 (FB) (F), it was held that a plaintiff who is asking for a declaration that he is the rightful Mahant of certain endowed property, must ask for possession over the property also and his failure to do so vitiates the suit. That was on the ground that the office of Mahant could not be separated from the properties and a mere suit for a declaration to the office of the Mahant without a relief for possession over the property was not maintainable.

In that case, the defendant was in possession of the properties. The position here is quite different as the defendant on the date of the suit was not in possession of the properties at all. In --'Annapurna Dasi v. Sarat Chandra', AIR 1942 Cal 394 (G), the suit was for a declaration that a mortgage decree was not binding on the plaintiff or on the estate of which a receiver had been appointed.

Execution of the mortgage decree had started before the institution of the declaratory suit.

During the course of the suit the properties were sold in execution of the mortgage decree and were purchased by a third party. The purchaser was added as a third party, but without a relief for possession being added. It was held that the suit as not maintainable because although it was not necessary for the plaintiff to sue for possession, he should have asked for the relief for injunction restraining the defendants from executing their decree.

The facts of the present case are different. No decree was in the course of execution in the present case at the instance of the defendant. As no order had been made in favour of the defendant by the revenue court prior to the date of the institution of the suit we do not think that it was necessary for the plaintiff to have asked for the relief of injunction.

In -- 'Mt. Bibi Zubaida v. Mohan Ram', AIR 1937 Pat 229 (H), certain mortgaged property was put to sale in execution of a mortgage decree obtained by A against B. A suit was brought by B's wife and mother for a declaration that the decree was not binding on them and that the mortgaged property could not be sold as it was wakf property. Subsequently, plaintiffs applied for an injunction staying further proceedings in execution. This was refused.

Later on, possession was given to A, the decree-holder, on account of the happening of certain events. The court dismissed the suit in the end as the plaintiffs had not prayed for the grant of an injunction in the plaint or, apply subsequently to add the relief for possession. It was held that the declaration originally prayed for could not be given partly because it would have been utterly infructuous and partly because the absence of a prayer for an injunction barred the suit under the provisions of Section 42, Specific Relief Act.

It may be noticed that the declaration sought was that a certain property was not liable to be sold in execution of a decree and that the decree was not binding on the plaintiffs. After the decree had been fully executed and satisfied, the grant of the declaration sought was rendered infructuous, and therefore, the court may be said to be justified in refusing to grant the declaration asked for.

But the observation that the injunction should have been sought in the plaint itself, and because it was not sought the suit was not maintainable under Section 42, Specific Relief Act, does not appeal to us. At the date of the suit the property had not been sold and if we have to consider the state of affairs existing at the date of the suit, we cannot say that the plaintiff was under any necessity of suing for a relief by way of injunction.

The learned Judge, if we may say so with respect, did not take into consideration the well settled principle that changes in the situation of the parties that might occur during the course of litigation need not be taken into account by a plaintiff when he sues for a mere declaration.

5. We think that the court below was in error in dismissing the suit.

6. The result, therefore, is that we allow this appeal, set aside the decree of the court below and remand the case to that court for trial according to law. The plaintiff will have his costs of the appeal. The cost of the lower court will abide the result.

7. The stay order is discharged.