# Swami Parmatmanand Saraswati & Anr vs Ramji Tripathi & Anr on 21 August, 1974

## Equivalent citations: 1974 AIR 2141, 1975 SCR (1) 790, AIR 1974 SUPREME COURT 2141, 1974 2 SCC 695 1975 (1) SCR 790, 1975 (1) SCR 790, 1975 (1) SCR 790 1974 2 SCC 695, 1974 2 SCC 695

## Author: Kuttyil Kurien Mathew

## Bench: Kuttyil Kurien Mathew, A.N. Ray

PETITIONER:
SWAMI PARMATMANAND SARASWATI & ANR,

Vs.

RESPONDENT:
RAMJI TRIPATHI & ANR.

DATE OF JUDGMENT21/08/1974

BENCH:
MATHEW, KUTTYIL KURIEN
BENCH:
MATHEW, KUTTYIL KURIEN
RAY, A.N. (CJ)

CITATION:
1974 AIR 2141 1975 SCR (1) 790
1974 SCC (2) 695
CITATOR INFO :
RF 1975 SC 371 (9)
D 1991 SC 221 (9)

ACT:
Code of Civil Procedure (Act 5 of 1908) s. 92--Suit under--Tests for.

HEADNOTE:
The head of a math, executed a will by which he nominated a panel of four persons in order of choice to succeed him as head. After his death. the first respondent, who was the first in the panel, accepted the office. But A section of the worshippers installed K. an outsider, as the head of the math, Thereafter, the appellants, after obtaining the permission of the Advocate General. filed the suit under s.

92, C.P.C., against the first respondent. They alleged that the deceased head of the math did not execute the will while he was in sound disposing state of mind; that the first respondent had not the requisite learning in Sanskrit and the Vedas; that the first respondent was therefore not a qualified person; and that the first respondent had committed breach of trust of the math properties. The appellants prayed for a declaration that K was the duly installed head of the math, and in the alternative to appoint any other competent person as head of the math. They also prayed for the vesting of the properties of the math in the new head, for rendition of accounts by the first respondent, and for a direction for the administration of the trust properties. The trial court and High Court held that the suit was only for the vindication of tile right of K and was therefore not maintainable under s. 92 and dismissed the suit.

Dismissing the appeal to this Court,

HELD : ( 1) This Court would not disturb the, finding that the suit was primarily one for declaration that K was the duly installed head of the math especially when the allegations in the plaint are reasonably susceptible of being so read. [800E-G]

(2) A suit under s. 92, C.P.C., is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. When two or more persons interested in the trust bring a suit purporting to be under the section the question whether the suit is to vindicate the personal or individual right of a third person or to assert the right of the public must be decided after taking into account the dominant purpose of the suit in the light of the allegations in the plaint. The suit can proceed only on the allegations that there was a breach of such trust, or that the direction of the court is necessary for- the administration of the trust, and the plaintiff must pray for one or more reliefs that are mentioned in the section. If the allegation of breach of trust is not substantiated or the plaintiff had not made out a case for any direction by the court for the proper administration of the trust, the very foundation of the suit would fail; and, even if all the other ingredients of a suit under s. 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested then the suit would be outside the scope of S. 92. When the right to the office of the trustees is assented or denied and relief asked for on that basis, the suit falls outside a. 92. There is no reason to think that whenever a suit is brought by two or more persons under s. 92, the suit is to vindicate the right of the public. In deciding whether the suit falls within the section the Court must go beyond the reliefs and have regard

to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. [799D-800A]

Sugra Bibi v. Hazi Kumma mia, (1969) 3 S.C.R- 83, followed.

Shamukhan v. Govinda, A.I.R. 1937 Madras 92. Tirumalai Devasthama v. Krishanayya A.I.R. 1943 Madras 466, approved.

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(3) If on the allegations in the plaint it is clear that the purpose of the suit was to vindicate the individual right of K to be the head of the math there is no reason to hold that the suit was brought to uphold the right of the beneficiaries of the trust, merely because the suit was filed by two or MGM members of the public after obtaining the sanction of the Advocate General and one or more of the reliefs specified in the section are claimed therein. The relief regarding the appointment of K and the alternative relief to appoint some other person " the head, without any allegations as to the circumstances which would invalidate K's installation and without impleading him as a party, shows the attempt to mako it appear that the appellants were disinterested champions of the right of the public. If the real purpose in bringing the suit was to vindicate the general right of the public to have the rightful claimant appointed to the office them was no reason why the appellants, as plaintiffs, omitted to implead or at lout refer in the plaint to the three persons nominated by the deceased head of the math in his will to succeed in the order indicated therein, especially when the appellant accepted the custom of the math to have the successor nominated by the incumbent for the time being. [800C-D, F-H].

(4) The trial court as well as the High Court found that there was no evidence to substantiate the allegations of breach of trust against the fies respondent. No reasons were given in the plaint for asking the directions of the court for the administration of trust. The plaintiffs did not plead facts and particulars as regards any defect in the machinery for administration which had crept in, under custom or rules. which required rectification. [80OH-801C]

(5) To we whether the suit falls within the ambit of a. 92, only the allegation in the plaint should be looked into in the first instance. But, if after evidence is taken it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any foundation of fact or reason, but is made only with a view to bring the suit under the section, then such a suit must be dismissed. [801D-F]

Association of B. D. B. Bagga Singh v. Gurnam Singh, A.I.R. 1972 Rajasthan 263, Vahan Singh v. Achhar Singh & Others A.I.R. 1968 Punjab and Haryana 463, and Radha Krishna & Others v. Lachmi narain and others A.I.R. 1948 Oudh 203. referred to.

[The question whether the words "where the direction of the court is deemed necessary for the administration of any such

trust" must be interpreted to Dan that where the court has to give directions in the nature of framing a scheme or otherwise for the administration of the trust, or whether those words can refer only to directions given to an existing trustee or to a new trustee when one is to be appointed, or to directions when there are allegations of maladministration amounting to breach of trust not decided]. [801C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1589 of 1973.

Appeal by Special Leave from the Judgment and Order dated the 11th September, 1973 of the Allahabad High Court in First Appeal No. 385 of 1962.

D. V. Patel, R. Dwivedi, 0. P. Shah and M. V. Goswami for the appellants.

P. Ram Reddy, R. D. Sharma, S. S. Khanduja V. K. S. Chaudhary, Narayan Swarup and Yatendra Singh Choudhry, for respondent no. 1.

Pramod Swarup, for respondent No. 2.

K. S. Ramamorthy, Ambrish Kumar and Ramesh Kumar, for intervener.

The Judgment of the Court was delivered by MATHEW, J. The appellants, as plaintiffs, filed a suit under s. 92 of the Civil Procedure Code alleging breach of a trust created for a public purpose, of a religious nature and praying for removal of the defendant, the head of the Math in question claiming title to the office under a will executed by the predecessor-in-office and for either reliefs. The District Court dismissed the suit on the Ground that the suit will not lie under s. 92 of the Civil Procedure Code. The High Court, on appeal, upheld that judgment and, this appeal, by special leave, is directed against that judgment.

Adi Shankaracharya founded Maths at four centres in India about a thousand years ago. The math with which we are concerned was established by him in Himalayas. This Math was known by the name of Jyotir Math or Jyotish Peeth. For centuries, the existence of this Math was unknown to the public and even the place where the Math stood had to be found out. In 1940, a society known as Bharat Dharma Maha- Mandal or Kashi made an effort to discover the Math and the effort proved successful. The relics of the Math were found near Badrikashram. The land on which the relics were found along with certain other property on the banks of Varuna in Kashi was acquired by the Society and thereafter the Society created an endowment of the land by a deed dated April 11, 1941 in favour of Jyotir Math and Swami Brahmanand Saraswati (Brahmanand for short), a man renowned for his piety and vedic learning was installed as the Head of the Math. Brahmanand died on May 20, 1953. Before his death, he executed a will which was published on June 8, 1953. By the will, he nominated

a panel of 4 persons in-order of choice indicated in the will to succeed him as head of the Math. His first choice was Swami Shantanand Saraswati, respondent No. 1. Respondent No. 1 accepted the office, He was installed as Shankaracharya of the Math on June 12, 1953. Thereafter dispute arose among the worshippers of Jyotir Math. A section of the worshippers installed Swami Krishna bodhashram ('Krishnabodhashram' for short) as the Shankaracharya of the Math on June 25, 1953, as according to them, Brahmanand did not execute any will nominating his successor, and even if he executed a will, it was not executed by him while he was in a sound disposing state of mind and that in accordance with the custom and the rules of the Math, they were entitled to instal a person nominated by them as the Head of the Math.

Respondent No. 1, who was installed on June 12, 1953, as the Head of the Math, came into possession of the Math properties. The worshippers who supported the claim of Krishnabodhasbram filed a suit in January, 1954 in the Munsiff Court at Lucknow for an injunction restraining respondent No. 1 from interfering with the Math properties. In the meanwhile, respondent No. 1 applied fear a succession certificate in the Court of District Judge, Allahabad and that was granted on December 12, 1956. Thereafter, four persons alleging themselves to be interested in the Jyotir Math, after obtaining permission of the Advocate General, filed the suit under s. 92 of the Civil Procedure Code against respondent No. 1.

The main allegations in the plaint were that Brahmanand did not execute the will while he was in a sound disposing state of mind, that respondent No. 1 had not the requisite learning in Sanskrit and the Vedas and, therefore, he was not qualified to be nominated as successor to the headship of the Math, that he came into possession of the Math properties and has committed breach of trust by applying for grant of succession certificate and other acts, that Krishnabodhashram was duly installed as the Shankaracharya of the Math on June 25, 1953 and that direction of the Court was necessary for the administration of the trust properties. The plaintiffs prayed for the removal of respondent No. 1 from the headship of the Math, a declaration that Krishnabodhashram was the duly installed head of the Math and to appoint him as the head, and in the alternative, to appoint any other competent person as the head of the Math. They further prayed for vesting of the properties of the Jyotish Math in the new Head and for rendition of accounts by respondent No. 1, etc., and to restrain him from prosecuting the application for succession certificate and also the mutation proceedings. The defendant (respondent No. 1) practically denied all the allegations in the plaint and contended that the suit being one primarily for the vindication of the claim of Krishnabodhashram to be the Shankaracharya of the Math, was not maintainable under s. 92 of the Civil Procedure Code. The District Court found that Brahmanand executed the will while he was in sound disposing state of mind, that respondent Nc. I being one of the nominees under the will having the prior claim would have been entitled to succeed as the Head of the Math but for the fact that lie was not learned in Sanskrit and the Vedas which was a necessary qualification for holding the headship of the Math. It further found that the allegations with respect to the breach of trust by respondent No. 1 had not been proved, that Krishnabodhashram was validly installed as the Shankaracharya of the Math but that the suit as it was brought for the vindication of the right of Krishnabodhashram to the headship of the Math, was not maintainable under s. 92 of the Civil Procedure Code. The High Court dismissed the appeal on the basis that the suit was incompetent under s. 92 of the Civil Procedure Code.

It is clear from the allegations in the plaint that the plaintiffs primarily wanted a declaration from Court that Krishnabodhashram was duly installed as the Shankaracharya of the Math on June 25, 1953, that he came into possession of the properties of the Math and, therefore, the Court should appoint him as the Shankaracharya of the Math. In order to enable the Court to give that declaration, the plaintiffs wanted a declaration that the will nominating respondent No. 1 as successor of Brahmanand was not executed by Brahmanand when he was in a sound disposing state of mind and that even if the will was validly executed, respondent No. 1 did not have the requisite learning in Sanskrit and the Vedas and so, he was not qualified to be nominated as the Head of the Math and, therefore, his installation as the Shankaracharya of the Math on June 12, 1953 was invalid. There was no allegation in the plaint questioning or even casting any doubt on the validity of the installation of Krishnabodhashram as the Shankaracharya of the Math and there was also no allegation against his as respects his management of the trust properties. Then, how was it that the plaintiffs prayed in the alternative for appointment of some other person as Shankaracharya ? The relief for the appointment of Krishnabodhashram as the Shankaracharya of the Math by the Court and the alternative relief to appoint some other person as the Shankaracharya, without any allegation as to the circumstances which would invalidate, the installation of Krishnabodhashram and without impleading him as at party to the suit would show the strain of the draftsman to dress up the plaint with prayers to make it appear that the plaintiffs were the disinterested champions of the right of the public and not the mere partisan advocates of the personal cause of Krishnabodhashram.

A suit under s. 92 is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the Court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is, therefore, clear that if the allegation of breach of trust is not substantiated cr that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under the section would fail, and, oven if all the other ingredients of a suit under s. 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of S. 92 see Shamukhan v. Govinda (1) Tirumalai Devasthanams v. Krishnayya(2). Sugra Bibi v. Hazi Kummu Mia(3) and Mulla :

> Civil Procedure Code (13th ed.), Voll. 1, p. 4001. A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights; and in deciding whether a suit falls within s. 92, the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature arc precluded from suing under the section to vindicate their individual or personal rights. It (1) A.I.R. 1938

Madras 92. (2) A.I.R. 1943 Madras 466. (3) [1969] 3 S.C..R. 23.

is quite immaterial whether the, trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside s. 92. We see no reason why the same principle should not apply, if what the plaintiffs seek to vindicate here is the individual or personal right of Krishnabodhashram to be installed as Shankaracharya of the Math. Where two or more persons interested in a trust bring a suit purporting to be under s. 92, the question whether the suit is to vindicate the personal or individual right of a third person or to assert the right of the public must be decided after taking into account the dominant purpose of the suit in the light of the allegations in the plaint. If, 'on. the allegations in the plaint, it is clear that the purpose of the suit was, to vindicate the individual-right of Krishnabodhashram to be the Shankaracharya, there is no reason to hold that the suit was brought to uphold the right of the beneficiaries of the trusts, merely because the suit was filed by two or more members of the public after obtaining the sanction of the Advocate General and claiming one or more of the reliefs specified in the section. There is no reason to think that whenever a suit is brought by two or more persons under s. 92, the suit is to vindicate the right of the public. As we said, it is the object or the purpose of the suit and not the reliefs that should decide whether it is, care for vindicating the right of the public or the individual right of the plaintiffs or third persons.

The trial Court, after reading the allegations in the plaint and afterlooking into the entire evidence in the case, came to the conclusion that the suit was primarily one for declaration that Krishnabodhashram was duly installed as the Shankaracharya of the Math on June 25, 1953 and that respondent No. 1 had no right to be nominated as the Head of the Math by Brahmanand as he did not possess the requisite qualification and that his possession of the trust property was only in the capacity, of a trustee de son tort, and so he must be removed from the headship of the Math. The High Court saw no reason to differ from that finding. We would be slow to disturb a finding of this nature especially when we see that the allegations in the plaint are reasonably susceptible of being so read. We think that the purpose of the suit was to settle the controversy as to whether Krishnabodhashram or respondent No. 1 had the better claim to the headship of the Math and to the possession and management of its properties by obtaining a declaration of the Court. If the real purpose in bringing the Suit was to vindicate the general right of the public to have the rightful claimant appointed to the office,, there was no reason why the plaintiffs omitted to implead or at least refer in the plaint to the three persons nominated by Brahmanand in his will to succeed him in the order indicated therein especially when it is seen that the plaintiffs accepted the custom of the Math to have the successor nominated by the incumbent for the time, being of the office of Shankaracharya.

The Trial Court as well as the High Court found that there was no evidence to substantiate the allegations regarding the breach of trust, said to have been committed by respondent No. 1. In paragraph 20 of the plaint, there was an allegation that the direction of the Court was necessary for the administration of the trust. But no reasons were given in the plaint why the plaintiffs were seeking the direction of the Court. There were no clear allegations of maladministration viz., that respondent No. 1 was diverting the trust properties for his personal benefit or that he was

committing any devastavit. The High Court was of the view that since the plaintiffs did not plead facts and particulars as regards the defect in the machinery for administration which had crept in under custom or rules which required rectification, the prayer for direction was a mere pretense to bring the suit under S. 92. A direction cannot be given by the Court unless it is shown that it is necessary for the proper administration of the trust. We do not think it necessary to decide for the purpose of this case whether the words ,,where the direction of the court is deemed necessary for the administration of any such trust" must be interpreted as meaning that where the court has to give directions in the nature of framing a scheme or ,otherwise for the administration of the trust or whether those words can refer only to directions given to an existing trustee when there is one or to a new trustee when one is to be appointed or to directions when there are allegations of maladministration amounting to breach of trust. It is sufficient for the purpose of this case to say that the prayer for direction was a prayer in vacuum without any basis in reason or f acts.

It is, no doubt, true that it is only the allegations in the plaint that should be looked into in the first instance, to see whether the suit falls within the ambit of S. 92 [see Association of B.D.B. Bagga Singh v. Gurnam Singh (1), Solhan Singh v. Achhar Singh & Others(2) and Radha Krishna & Others v. Lachmi Narain & Others(3) ]. But, if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in facts or reason but is made only with a view to bring the suit under the section, then a suit pur- porting to be brought under s. 92 must be dismissed. This was one of the grounds relied on. by the High Court for holding that the suit was not maintainable under s. 92. We think that the High Court was right in dismissing the suit on the ground that it did not fall within S. 92 of the Civil Procedure Code. We, therefore, dismiss the appeal but, in the circumstances, without any order .is to costs. V.P.S. Appeal dismissed.

(1) A.I.R 1972 Rajasthan 263.

(2) A.I.R. 1968 Punjab & Haryana 463.

(3) A.I.R. 1948 Oudh. 203,