

Supreme Court of India

Charan Singh And Anr vs Darshan Singh And Ors on 17 December, 1974

Equivalent citations: 1975 AIR 371, 1975 SCR (3) 48

Author: N Untwalia

Bench: Untwalia, N.L.

PETITIONER:

CHARAN SINGH AND ANR.

Vs.

RESPONDENT:

DARSHAN SINGH AND ORS.

DATE OF JUDGMENT 17/12/1974

BENCH:

UNTWALIA, N.L.

BENCH:

UNTWALIA, N.L.

MATHEW, KUTTYIL KURIEN

BHAGWATI, P.N.

CITATION:

1975 AIR 371                      1975 SCR (3) 48

1975 SCC (1) 298

CITATOR INFO :

D                      1991 SC 221 (9)

ACT:

Section 92 of C.P.C.-Consent of Advocate General for instituting a suit-Whether allegations in the plaint to be seen for determining whether the suit is of the nature mentioned in section 92-Whether substance of the nature of the suit to be taken into consideration-Whether reliefs mentioned in section 92 should be present in the plaint.

Suit filed in a representative capacity whether abates on the death of one of the plaintiffs.

HEADNOTE:

The respondents filed a suit against appellant No. 1 for permanent injunction restraining him from interfering with the Guru Garanth Saheb, for religious recitals in the Darbar Saheb as well as restraining him from interfering with the rights of reciting the Guru Garanth Sahib and holding and joining the religious congregations and Satsang in the Gurudwara. The villagers dedicated certain land to the Granth Saheb in the year 1897. Several persons succeeded as the trustees, the appellant being the last one at the relevant time. The grievance made in the suit was that the

appellant was committing a breach of trust by not using the Dera in general and Darbar Saheb in particular for the purposes for which the same was dedicated. The Trial Court held that the suit was not maintainable in the absence of the consent of the Advocate General as required by section 92 of the Civil Procedure Code. The First Appellate Court affirmed the decision of the Trial Court. The Single Judge of the High Court in Regular Second Appeal dismissed the plaintiff's appeal on the ground that the suit was hit by section 92 of the Civil Procedure Code. On grant of leave under clause 10 of the Letters Patent. Bench allowed the appeal and remitted back the case to the Trial Court holding that the suit was not barred by section 92 of the Code.

On appeal by Special Leave it was contended before this Court that (1) The judgment of the High Court in relation to section 92 of the Code is erroneous in law. The suit was barred under the said provision of the Code; (2) On the death of one of the plaintiffs appellants during the pendency of the second appeal in the High Court the whole of the appeal abated and ought to have been dismissed as such.

Allowing the appeal.

HELD : Since the suit has been filed in a representative capacity on the death of one of the plaintiffs it did not abate. The decision in Raja Anand Rao followed. [53C]

HELD FURTHER : The plaint alleges breach of duty on the part of the trustee and the plaintiffs seek the court's aid against the trustee for forcing him to discharge his obligations by due performance of his duties. The present suit was a suit for a decree under section 92 of the Code and since it was not filed in conformity with the requirements of that provision of law it was not maintainable. It is well settled that the maintainability of the suit under section 92 of the Code depends upon the allegations in the plaint and does not fall for decision with reference to the averments in the written statement. The plaintiffs in their plaint did not in terms ask for the one or the other reliefs mentioned in section 92(1). They, however, alleged acts of breach of trust, mismanagement, undue interference, with the right of the public in the worship of Granth Saheb. They wanted a decree of the court against the appellants to force him to carry out the objects of the trust and to perform his duties as a trustee. [57A-B]

#### ARGUMENTS

For the Appellants : On reading the entire plaint the reliefs claimed are covered by s. 92(1)(a) to (h) Code of Civil Procedure.

(i)The plaint clearly shows that the property involved is trust property and that the trust is a public trust or charitable and religious nature.

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(ii)The plaint also shows that the aim was for benefit of the public.

(iii) Reliefs claimed fall within Sub-Clause (e)-The place

where Guru Granth Sahib was placed was called "Darbar Sahib" where it was to be recited and where Sat Sang and Amrit Pan Ceremony were to be held. The reach alleged is that the appellant is not using the "Darbar Sahib,, for the purpose for which it 'was dedicated and further says that the villagers have a right to recite and worship Granth Sahib installed in the Dera in general and Darbar Sahib in particular and that the appellant has stopped the villagers from doing so. Relief claimed is that the Defendants should be restrained from interfering with the maintaining of Granth Sahib for religious recitations in the Darbar Sahib in the Dharamsala or Dera.

Therefore, the respondents required directions of the court to demarcate the exact location of Darbar Sahib within the Dera Jaimal Singh where Granth Sahib is to be located and worshipped etc.

Such a suit relates to the administration of the said trust and falls within subclause (e) of s. 92(1).

Further the directions required involve framing of a scheme for time for worshipping the Granth Sahib or for its recitation and for holding Sat Sang and Amrit Pan Ceremony. Therefore, the suit falls within s. 92(1)(g).

In any case the suit falls within Sub-clause (h).-The defendants contention is that the scope of s. 92(1)(a) to (h) should involve administration of the Trust Property. Sub-Clause (a) to (g) describe some of the administrative problems arising in a particular case as all such problems could not be easily stated in a statutory provision. Any suit filed to establish existence of a trust or to establish title of the trust to a piece of property would not be covered by any sub-clause of s. 92.

The plaintiffs did not contest that the suit was not covered by clause (h) before the First Appeal Court, and also vide Judgment of the High Court. In substance the complaint is that the appellant contrary to purpose of the Trust is preventing the villagers etc, from worshipping and reciting Granth Sahib in the Darbar Sahib and is preventing them access there to hold Sat Sang and other ceremonies. These breaches are obviously in the course of the administration of the Trust. and must be held to be covered by sub-clause (h).

Some of the plaintiffs have died during the pendency of the Second Appeal in the High Court and their legal representatives were not brought on the record. Therefore, the appeal had abated against them. Defendants had argued that the appeal had abated in toto but this plea was rejected by the Single Judge. The defendant-, filed cross objection against this decision before the Letters Patent Bench but the same were dismissed without discussion.

If it be held that the suit was filed for public benefit in a representative capacity then this point is conceded to have no force. However, if it be held that the suit was to enforce individual rights then the appeal had abated in toto

as otherwise there will be conflicting decisions whether a suit is covered by s. 92 or not.

Under s. 5 of the Punjab Common Lands (Regulation) Act 18 of 1961 all Shamlat Lands vest in the village Panchayat. The land in dispute is Shamlat land, therefore, the plaintiffs or villagers could not file a suit relating to this Shamlat land. Plaintiffs case is that under s. 2(g) (ix) this land is used as a place of worship and, therefore, is not covered by this Act. The defendants case is that the present institution is not a place of worship as Radha Swamis do not carry on worship at all at any place.

For the respondents : The substance of the plaint is (1) (a) that the defendant is not using the Dera in general and Darbar Sahib in particular for the purpose for which the same are dedicated. (b) that the defendant alleges that "maintenance of the Guru Granth Sahib and Darbar Sahib and access of the people to Dera and Darbar Sahib" depends on his sweet will and discretion. (c) that the defendant has a right not to allow any person to enter Dera and recite

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Granth Sahib. (d) that the plaintiffs have a right to worship in Dera and Dar bar Sahib and recite Granth Sahib. (e) that the plaintiffs have a right to set that Dharm sala Dera and Gurdwara is used for the purpose and fulfilment of which the same is established. (2) In the plaint thus the existence of a trust and its denial by the defendant not only by not using it for the purpose of dedication but also openly asserting a hostile right that it is his sweet will to permit even access to the Dera are alleged. Thus the allegation in substance and form is that the existence of trust and reciting Granth Sahib is denied by defendant and he places obstruction to the free access of the beneficiaries of trust.

(3)The relief claimed is for injunction to restrain the defendant from interfering with maintenance of Guru Granth Sahib in Darbar Sahib and from reciting the same; which it is submitted is not covered by any of the sub clauses of s. 92(1) C.P.C. and therefore s. 92 C.P.C. is not attracted.

(4)That since the said relief could not be covered by any other sub-clause an attempt was made by the appellant to bring the relief under sub-clause (h) of s. 92(i) which read as under

"granting such further or other relief as the nature of the case may require."

This clause as held by Privy Council in 1928 PC. 16 must be read not in isolation from but ejusdem generis to the other clauses of the sub-section. It is intended to cover up such other reliefs that may be necessary in order to effectively grant any one of the reliefs mentioned therein the earlier clauses something ancillary or akin to them or some relief which follows as a necessary corollary flowing therefrom.

It cannot be construed to mean some such relief which in its

nature and substance something wholly different from them and not covered by any of the earlier sub clause (a) to (g). It if were so then it would cover all the various reliefs that can conceivably be claimed in a suit based on the allegation of breach of trust. That could not be the intention of the legislature otherwise nothing would be easier for the legislature to say that for the grant of any relief based on the allegations of breach of trust the sanction of advocate General would be a precondition for the institution of such a suit.

The intention appears to be clear that in suits based on allegations of breaches of trust of charitable and religious nature where some what may be termed drastic reliefs as contemplated in sub-clause (a) to (g) of s. 92 (1) C.P.C. are prayed then in only such cases would the sanction be needed.

Thus suits for declaration of trust are out side the purview of s. 92, so also suits for declaration and possession. On principle there is no difference in relief of injunction from that of declaration. In fact relief of injunction has been held to be not covered among the relief contemplated in sub-clauses (a) to (h).

5.A distinction was sought to be made between suits where allegations of total denial by defendant of existence of trust are made in a plaint from suits where breaches by defendant of trust or duties only are alleged and it was suggested that for the former suits no sanction needed and for the latter sanction was necessary.

The said contention is not enable; firstly the denial of the existence of trust is also a breach of trust. and secondly nothing would be easier to circumvent the said condition by alleging denial by the defendant of the trust in the plaint and thereafter seeking reliefs which admittedly fall within sub clauses (a) to (g) of s. 92(1). To put it conversely and can it be suggested that where the allegations are that defendant is denying the trust but relief prayed for is removing the trustee which is clearly covered by sub clause (a), no sanction would be needed.

It is submitted that the emphasis in section 92 C.P.C. is not on the manner in which breach of trust is alleged whether it is by denial of existence of trust or which admitting the existence of trust or while admitting the existence of trust the defendant does not perform his duties but the emphasis is on the reliefs sought for purposes of sanction.

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6.It is further submitted that though allegation in plaint are primarily to be looked at for this purpose but where parties have led evidence reference to the same have also been made to find out the real nature of the suit. (see 1974 Vol. 2, S.C.C. Part X 695).

In the present case defendant in his written statement has denied the existence of trust for reciting Granth Sahib.

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 505 of 1974. Appeal by Special Leave from the Judgment & Order dated the 13th December, 1973 of the Punjab & Haryana High Court in L.P.A. No. 573 of 1971.

Bishan Narain, M. C. Bhandare, Nandtal Balkrishan Lulla, Nishat Singh Garewal and K. J. Johan of J. B. Dadachanji & Co., for the Appellants.

B. P. Maheshwari and Suresh Sethi for the Respondents. The Judgment of the Court was delivered by UNTAWALIA, J.-The plaintiffs respondents, in this appeal filed by the defendants appellants by special leave of this Court from the decision of the High Court of Judicature of Punjab and Haryana instituted a suit in the year 1963 against appellant no. 1 alone (for the sake of brevity described as the appellant hereinafter in this judgment) praying for a decree for permanent injunction against him to restrain him 'from interfering with the maintaining of the Guru Granth Sahib for religious recitals in the Darbar Sahib in the Dharmasala also known as Dharmasala Dera Baba Jaimal Singh situated in village Balsarai Tehsil and District Amritsar as also restraining him from interfering with the plaintiffs and other satsang is rights of reciting the Guru Granth Sahib and holding and joining the religious congregations and Satsang in the above mentioned Gurdwara Baba Jaimal Singh."

About 70 years prior to the institution of the suit one Sant Baba Jaimal Singh used to reside and practise spiritual sadhana at the place aforesaid. The residents of village Balsarai held him in great respect because of his high spiritual achievements and noble living. He got a Dharamsala built which came to be known as Gurdwara and according to the case of the plaintiffs Guru Granth Sahib was also installed there. The villagers gifted and dedicated 11 kanals, 16 marlas of land out of village Shamilat to the Granth Sahib in the year 1897. Several persons succeeded as the Manager/Trustee or Head of the Institution so established one after the other after the demise of Sant Baba Jaimal Singh the appellant being the last one at the relevant time. The plaintiffs who filed the suit in a representative capacity on behalf of the devotees of the Gurdwara in the first instance had wanted to institute the suit after obtaining the consent of the Advocate-General of Punjab in accordance with section 92 of the Civil Procedure Code-hereinafter referred to as the Code. But they failed to obtain the consent of the Advocate-General. Later on the plaintiffs instituted the suit endeavouring to frame it in such a manner so as to take it out of the ambit of section 92 of the Code. The grievance of the plaintiffs in the suit has been that the appellant Was committing a breach of trust by not using the, Dera in general and Darbar Sahib in particular for the purpose for which the same was dedicated. He had started denying the rights of the people to the Dera and Darbar Sahib and Guru Granth Sahib asserting that allowing them to do so depend, upon his sweet will and discretion. The plaintiffs, claiming a right in the institution for the Granth Sahib made a grievance that the appellant was interfering with their right and was not discharging his duties as he ought to do in accordance with the objects of the religious institution in question. In substance the relief claimed against the appellant is to prevent him from committing any breach of the trust and to direct him to perform his duties as a Manager or Trustee of the religious institution to carry out its objects.

Several pleas were raised by the appellant in his written statement to resist the suit. Many of them were by way of preliminary objections to the maintainability of the suit. Tirlok Singh, appellant no. 2 and two others were added as defendants 2 to 4 in the suit at their instance. 'The Court of the Subordinate Judge, Second Class at Amritsar framed as many as 7 preliminary issues and decided most of them in favour of the plaintiffs. But the issue as to whether the suit was competent in the absence of the consent of the Advocate-General under section 92 of the Code was decided against the plaintiffs. So the suit was dismissed. The fact that the institution was a Public Trust of a religious nature and that the suit had been filed by the plaintiffs in a representative capacity are no longer in dispute. One of the pleas taken by the appellant was that the suit was barred in view of the provisions of law contained in the Punjab Village Common Lands (Regulation) Act, 1961, Punjab Act No. 18 of 1961. But this plea was rejected by the 'Trial Court. From the dismissal of the suit plaintiffs went up in appeal. The first Appellate Court affirmed the decision of the Trial Court. They went up in a regular second appeal before the High Court. A learned Judge of the High Court dismissed the plaintiffs appeal on the ground that their suit was hit by section 92 of the Code. One of the plaintiffs and two of the added defendants namely defendants 3 and 4 died during the pendency of the second appeal in the High Court. Their heirs were not substituted. The appellant's plea that the appeal had abated as a whole was not accepted by the learned single Judge. He also held against him on the point of the suit being allegedly barred under Punjab Act 18 of 1961. On grant of leave under clause 10 of the Letters Patent the case was taken further before the Letters Patent Bench. The learned Judges constituting the Bench have allowed the Letters Patent appeal, remitted back the case to the Trial Court holding in favour of the respondents that the suit is not barred under section 92 of the Code. The surviving two defendants have come up to this Court.

Mr. Bishan Narain, learned counsel for the appellant, urged the following points in support of the appeal :

- (1) The judgment of the High Court in relation to section 92 of the Code is erroneous in law. The suit was barred under the said provision of the Code.
- (2) The plaintiffs had no locus standi to institute the suit as the property of the institution vested in the Panchayat under Punjab Act 18 of 1961.
- (3) On the death of one of the plaintiffs appellants during the pendency of the second appeal in the High Court the whole of the appeal abated and ought to have been dismissed as such.

The last two points may be shortly disposed of as they have to be stated merely to be rejected. Point no. (2) was eventually given up as it was completely devoid of substance. since the suit had been filed in a representative capacity, it is clear that on the death of one, of the plaintiffs it did not abate. In *Raja Anand Rao v. Ramdas Daduram and others*(1) it has been said Lord Dunadin at page 16 "There was also a point that the person who originally raised the suit and got the sanction having died the suit could not go on, but there does not seem any force in that point either, it being a suit which is not prosecuted by individuals for their own interests, but as representatives of the general public. It is plain that the second appeal did not lose its competency on the death of one of the

plaintiffs appellants. The only point which requires discussion and determination in this appeal is whether the suit filed by the plaintiffs was barred under Subsection (2) of section 92 of the Code.

It is well-settled that a suit of the nature envisaged by section 92(1) of the Code to obtain a decree for any one or more of the reliefs enumerated in clauses (a) to (h) of the Code has to be filed by the Advocate-General or two or more persons having an interest in the Trust with the consent in writing of the Advocate-General. Subsection (2) provides that save under certain circumstances..... no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the Provisions of that sub-section." Out of the 3 conditions which are necessary to be fulfilled for the application of section 92, two are indisputably present in this case viz. (1) the suit relates to a Public Charitable or Religious Trust; (2) it is founded on an allegation of a breach of trust and the direction of the Court is required for administration of the trust. The debate and dispute between the parties centered round the requirement of the fulfilment of the third condition namely whether the reliefs claimed are those which are mentioned in sub-section (1) of section 92 of the Code. A suit may be instituted under section 92(1) to obtain a decree-

(a) "removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee; (cc)directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

(1) 48 I.A.R 12.

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(d) directing.accounts and inquiries-,

(e) declaring-what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;

authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require."

The High Court in the Letters Patent appeal has taken the view that the relief sought for in the suit does not fall under any of the clauses (a) to (h) of section 92 of the Code. Learned counsel for the appellant has assailed this view and submitted that the relief sought for falls under clause (e) or (g) or in any event under clause (h). In our judgment the relief sought for in this case does not strictly or



squarely fall within clause (e) or (g) but is very much akin to either and hence is covered by the residuary clause (h).

Lord Sinha delivering the judgment of the Judicial Committee of the Privy Council in *Abdur Rahim and others v. Syed Abu Mahomed Barkat Ali Shah and others*(1) rejected the argument that the words "such further or other relief as the nature of the case may require" occurring in clause (h) must be taken, not in connection with the previous clauses (a) to

(g) but in connection with the nature of the suit. The argument was that any relief other than (a) to (g) in the case of an alleged breach of an express or constructive trust as may be required in the circumstances of any particular case was covered by clause (h). It was repelled on the ground that the words "further or other relief" must on general principles of construction be taken to mean relief of the same nature as clause (a) to (g) , It would be noticed that the word used after clause (g) and before clause (h) is "or". It may mean "and" in the context, or remain "or" in the disjunctive sense in a given case. If any further relief is asked for in addition to any of the reliefs mentioned in clauses (a) to (g) as the nature of the case may require, then the word "or" would mean "and". But if the relief for is other relief which is not by way of a consequential or additional reliefs in terms of clause (a) to (g), then the word "or" will mean "or". The other relief however, cannot be of a nature which is not akin to or of the same nature as any of the reliefs mentioned in clauses

(a) to (g). According to the plaintiffs' case one of the objects of the religious trust was the worship of Granth Sahib and its recital in congregations of the public. In the suit a decree declaring what portion of the trust property should be allocated to the said object could be asked for under clause (e). The plaintiffs could also ask for the settling of a scheme under clause (g) alleging mismanagement of the religious trust on the part of the trustees. In the settlement of the scheme could be included the worship and recital of Granth Sahib the holy Granth. The plaintiffs in their plaint did not (1) A.I.R. 1928 Privy Council, 16: 55 Indian Appeals 96.

in terms. ask for the one or the. other. They., however, alleged acts of breach of trust, mismanagement, undue interference with the right of the public in the worship of Granth Sahib. They wanted a decree of the Court against the appellant to force him to carry out the objects of the trust and to perform his duties as a Trustee. Reading the plaint as a whole it is not a suit where the plaintiffs wanted a declaration of their right in the, religious institution in respect of the Granth Sahib. But it was a suit where they wanted enforcement of due performance of the duties of the trustee in relation to a particular object of the trust. It is well-settled that the maintainability of the suit under section 92 of the Code depends upon the allegations in the plaint and does not fall for decision with reference to the averments in the written statement.

In *Mahant Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai and others*(1) it was pointed out at page 517 by Mukherjea, J, as he then was, speaking for the Court "A suit under section 92, Civil Procedure Code, is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the court are necessary for the administration thereof, and it must pray for one or other of the reliefs that are specifically mentioned in the section. It is

only when these conditions are fulfilled that the suit has got to be brought in conformity with the provision of section 92, Civil Procedure Code. As was observed by the Privy Council in *Abdur Rahim V. Barkat Ali*(2), a suit for a declaration that certain property appertains to a religious trust may lie under the general law but is outside the scope of section 92, Civil Procedure Code." In a very recent decision, this Court speaking through one of us (Mathew, J) in the case of *Swami Paramatma. nand Saraswati and another v. Ramji Tripathi and another*(3) has reiterated the same view in paragraph 10 at page 699 wherein it has been further added "It is, therefore, clear that if the allegation of breach of trust is not substantiated or 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, even if all the other ingredients of a suit under section 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 Section 92."

Mr. B. P. Maheshwari, learned counsel for the respondents placed strong reliance upon a decision of the Patna High Court in *Ganpat Pujari v. Kanaiyalal Marwari*(4) and the decision of this Court in *Harendra Nath Bhattacharya & ors. v. Kalimaram Das-dead by* (1) [1952] S.C.R.513. (2) (1928) 55 Indian Appeals, 96. (3) [1974] 11 S.C.C. 695. (4) A.I.R. 1933 Patna. 246. (5)[1972] 2 S.C.R. 492.

Lrs.(5) In the Patna case the first relief asked for in the suit was for an adjudication of the property in the suit belonging to the general public and for a declaration of their right to that effect. The Thakurbari in question was claimed to be a public property to which the entire Hindu community was entitled to go and worship. The appeal arising out of the suit came up before Wort and Fazal Ali, JJ as they then were. There was a difference of opinion as to the application of section 92 of the Code between them, the latter taking the view that section 92 of the Code was not a bar. On reference to the third learned Judge, Kulwant Sahay, J. agreeing with the view of Fazal Ali, J held that the relief claimed in the suit was not covered by clauses

(a) to (h) of section 92. The facts of the instant case are different and the Letters Patent Appeal Bench of the Punjab High Court committed an error in applying the ratio of the Patna case to the facts of the present case. In the case of *Harendra Nath Bhattacharya & Ors. v. Kalimram Das Dead by L.Rs. (supra)*, Grover, J delivering the judgment of this Court referred to the analysis made by the High Court as to the reliefs claimed in the plaint of that suit. In the main there were 4 reliefs as enumerated at pages 498 and 499 of the report. Reliefs (1) (2) and (4 ) were clearly outside the scope of section 92 of the Code. Learned counsel for the respondents submitted that relief no. 3 which was very much akin to the relief in the present suit was also held to be a relief not covered by any of the clauses of sub-section (1) of section 92 of the Code. In our opinion the contention is not sound and cannot be accepted. The third relief in that case as analysed by the Court was in the following terms "(3)" For a declaration that the plaintiffs as Bhakats of the Satrawas entitled to possess their own Basti and paddy landsand that they had a right to access to the use of the Satra for various religious purposes."

There were two parts of the said relief-one a declaration that the plaintiffs as Bhakats of the Satra were entitled to possess their own Basti and paddy lands and the other that they had a right to

access to the use of the Satra for various religious purposes. Such a relief could not come under clause (h) because it was mainly concerned with the establishment of the rights of the plaintiffs in the lands as well as in the religious institution. In the plaint of the instant case the relief claimed is not primarily for the establishment of the right of the public to the religious institution. It recites the facts as to the right without mentioning any appreciable dispute concerning it, mainly alleges breach of duty on the part of the trustee, and the plaintiffs seek the court's aid against the trustee for forcing him to discharge his obligations by due performance of his duties. In our judgment therefore the Courts below were right in taking the view that the present suit was a suit for a decree under section 92 of the Code and since it was not filed in conformity with the requirement of the Code and since it was not filed in conformity with the requirement of the said provision of law it was not maintainable. The contrary view taken by the Division Bench of the High Court in the Letters Patent Appeal is not correct.

In the result the appeal succeeds, the judgment of the High Court dated the 13th December, 1973 in L.P.A. No. 573 of 1971 is set aside. In the circumstances, we make no order as to costs in this appeal.

P.H.P. Appeal allowed.