

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:66071

RESERVED

Judgment reserved on 18.09.2024
Judgment Delivered on 24.09.2024

Court No. - 19

Case :- MATTERS UNDER ARTICLE 227 No. - 4294 of 2024

Petitioner :- Jyantri Prasad And 9 Others

Respondent :- Shri Ram Janki Lakshman Ji Virajman

Mandir,Pratapgarh Thru. Ram Shiromani Pandey And 2 Others

Counsel for Petitioner :- Saurabh Srivastava,Girish Chandra Sinha

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Girish Chandra Sinha, the learned counsel for the petitioner and Sri Hemant Kumar Pandey, the learned Standing Counsel.
2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioners have challenged validity of an order dated 13.08.2024 passed by the learned Civil Judge (Senior Division), Pratapgarh in Miscellaneous Case No.155 of 2014, under Sections 91 and 92 for a decree of declaration and perpetual injunction wherein the petitioners *inter alia* prayed for a direction for constituting an eleven members committee and for appointing him as Manager for managing Ram Janki Mandir. The trial court held that the plaintiffs have not filed any trust deed and there is no pleading as to who is the trust or manager of the trust. No Bye-laws/Rules of the trust have been brought on record. Therefore, the suit does not fall within the purview of Section 92 CPC and it was dismissed at the admission stage.
3. The plaintiff further submitted that Shri Ram Lakshman Janikiji Virajman' Temple had been constructed by their donations and they being the founders and worshippers, are entitled to file the suit in public interest.

4. The defendant no. 3 – Manoj Tiwari – the opposite party no. 2 in this petition, filed objections that there is no Trust and the plaintiffs are neither trustees nor beneficiaries of any trust and, therefore, the Suit filed under Section 92 C.P.C. is not maintainable.
5. The trial Court recorded that the plaintiff has filed the suit for a decree of declaration and perpetual injunction but neither he has filed any trust-deed nor does the plaint disclose the identity of the trustees or the Manager of the trust. No Bye-laws/Rules of the trust have been filed and there is no pleading regarding any public charities being administered by the property in dispute. Therefore, the Civil Judge came to a conclusion that the relief sought by the plaintiff does not fall within the purview of Sections 91 and 92 C.P.C. and dismissed the suit as not maintainable at the admission stage.
6. As the suit has been dismissed at the admission stage and the defendants have no right to be heard at this stage, this petition is being decided finally without issuing notice to the private opposite party, who has been arrayed as the defendant no. 1 in the plaint.
7. Assailing the validity of the aforesaid order, the learned counsel for the petitioner has submitted that existence of any trust-deed is not essential for admission of the suit.
8. Sub-sections (1) and (2) of Section 92 C.P.C., as it applies to the State of U.P., provide 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—

(a) removing any trustee;

(b) appointing a new trustee;

(bb) for delivery of possession of any trust property against a person who has ceased to be trustee or has been removed.

(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;

(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;

(f) authorising 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.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, 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.

(3)...”

(Emphasis added)

9. Section 2 of the Religious Endowments Act, 1863 contains the definition clause, which contains a solitary definition of the phrase ‘Civil Court’. It provides that: -

“In this Act, the words “Civil Court” and “Court” shall save as provided in Section 10 mean the principal Court of original civil jurisdiction in the district in which or any other Court empowered in that behalf by the State Government within the local limits of the jurisdiction of which the mosque, temple or religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.”

10. The phrase ‘Religious endowments’ is not defined in the Religious Endowments Act, 1863. Section 14, 15 and 18 of the Act of 1863 are also relevant for the present dispute, which provide that: -

“14. Persons interested may singly sue in case of breach of trust, etc.—Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of this trusts vested in, or confided to, them respectively;

Powers of Civil Court.—and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.

15. Nature of interest entitling person to sue.—The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

* * *

18. Application for leave to institute suits.—No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit.

The Court, on the perusal of the application, shall determine whether there are sufficient prima facie grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.

Costs.—If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.”

11. A combined reading of the aforesaid statutory provisions makes it manifest that a Suit under Section 92 C.P.C. can be filed in the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature. The section includes constructive trusts created for public purposes of a charitable or religious nature also.
12. In **Janki Prasad v. Kuber Singh**: AIR 1963 All 187 = 1962 SCC OnLine All 174, this Court held that: -

“8. ...The mere absence of a written document or mere absence of the entries is not a conclusive proof of the non-existence of a trust. A valid trust may be created not only by means of a written document but also orally but what is required in the case of oral trust is that the property must have been treated to be an endowed property and it must have been used towards charitable and religious purposes for which the trust was created.”
13. The Court cannot refuse to admit the suit only because of absence of a trust-deed.
14. Therefore, this Court is of the considered view that the learned trial Court has committed a patent illegality in dismissing the suit at the admission stage for the reasons that the plaintiff has not filed any trust-deed, the plaint does not disclose the identity of the trustees or the Manager of the trust and no Bye-laws/Rules of the trust have been filed and the relief sought by the plaintiff does not fall within the purview of Sections 91 and 92 C.P.C.
15. However, the suit could not have been admitted by the Civil Judge for a different reason. Section 92 C.P.C. and Section 2 of the Religious Endowments Act, 1863 provide that a suit under this provision can be filed “in the Principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government”, which phrase does not include a “Civil Judge”.
16. Section 3 (17) of the General Clauses Act provides as under:—

“District Judge” shall mean the Judge of a Principal Civil Court of Original Jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.”

17. Section 2 (4) of C.P.C. provides that: -

“(4) “district” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”), and includes the local limits of the ordinary original civil jurisdiction of a High Court”

18. Section 3 of the Bengal, Agra and Assam Civil Courts Act, 1887 provides for the following classes of Courts: -

“3. Classes of Courts.—There shall be the following classes of Civil Courts under this Act, namely:—

(1) the Court of the District Judge;

(2) the Court of the Additional Judge;

(3) the Court of the Subordinate Judge; and

(4) the Court of the Munsif.”

19. Section 18 of the aforesaid Act of 1887 provides that: -

“18. Extent of original jurisdiction of District or Subordinate Judge.—Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of Section 15 of the Code of Civil Procedure, to all original suits for the time being cognizable by Civil Courts.”

20. In **Muhammad Ali Khan versus Ahmad Ali Khan**: AIR 1945 All 261, a Full Bench of this Court had held that the decisions of various High Courts in India appear to establish that the District Judge as a principal civil court of original jurisdiction has power of nominating a *mutwalli* upon an application, in a summary manner, but the removal of a *mutwalli* can only be done by means of a suit properly instituted in the civil court. If the *waqf* be of a public, religious or charitable nature the suit would lie either under sections 14 and 18 of the Religious Endowments-Act of 1863 or under section 92 of the Civil Procedure Code. If, however, the *waqf* be of a private nature, e.g. a *waqf alal-aulad*, the proper remedy would appear to be a regular

civil suit under the general provisions of section 9 of the Civil Procedure Code.

21. In **Vinod Kumar versus DM, Mau**: AIR 2023 SC 3335 = 2023 SCC OnLine SC 787, while considering the provisions of Section 3-H (4) of the National Highways Authority Act, 1956 which provides that: *“(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.”* The Hon’ble Supreme Court held that:
*“We are of the view that when it comes to resolving the dispute relating to apportionment of the amount determined towards compensation, it is only the Principal Civil Court of original jurisdiction which can do so. **Principal Civil Court means the Court of the District Judge.**”*
22. In **Gangadeen versus Kanhaiya Lal**, AIR 1972 All 355, this Court has held that the phrase “Principal Civil Court of original jurisdiction” used in Section 92 C.P.C. and Section 2 of the Religious Endowments Act, 1863, will include the District Judge and the Additional District Judges and the same view has been reiterated in **Ashok Kumar Jain versus Gaurav Jain**: (2018) 140 RD 579.
23. There is no room to doubt that the Court of the District Judge is the Principal Court in the District and it has original jurisdiction. Therefore, the Court of District Judge is the Principal Civil Court of original jurisdiction. Judicial powers of an Additional District Judge are the same as that of a District Judge and, therefore, the District Judge can transfer a suit filed before him in the capacity of ‘the Principal Civil Court of original jurisdiction’ to an Additional District Judge. A Civil Judge is not the Principal Civil Court of original jurisdiction and has no jurisdiction to entertain a suit under Section 92 C.P.C. or Section 2 of the Religious Endowments Act, 1863 as ‘the Principal Civil Court of original jurisdiction’.
24. Apart from ‘the Principal Civil Court of original jurisdiction’ a suit under Section 92 C.P.C. and Section 2 of the Religious Endowments

Act, 1863 can also be filed 'in any other Court empowered in that behalf by the State Government'.

25. In spite of the hearing of the case having been adjourned to enable the learned Counsel for the petitioner and the learned Standing Counsel to inform the Court as to whether the State Government has empowered the Civil Judge or any other Court to entertain suits under Section 92 C.P.C. and Section 2 of the Religious Endowments Act, 1863, they could not place any material showing that any Court, other than the Principal Civil Court of original jurisdiction has been empowered by the State Government to entertain such suits.
26. Therefore, this Court is of considered view that a Suit under Section 92 C.P.C. and Section 2 of the Religious Endowments Act, 1863 in the State of Uttar Pradesh can only be filed in the Court of the Principal Civil Court of original jurisdiction, that is the Court of the District Judge, and not in any other Court. The District Judge can decide the Suit himself or he may transfer it to an Additional District Judge.
27. As per the provisions contained in Section 92 C.P.C. and Section 18 of the Religious Endowments Act, 1863, a suit as aforesaid can only be filed in the Principal Civil Court of original jurisdiction after seeking leave of the Court.
28. In **Sita Ram Das and Ors. Vs. Ram Chandra Arora and Ors.**: 1988 (14) ALR 86 = 1988 AWC 124 All, this Court held that: -

“There can not be any doubt that when the court grants leave the same is in a judicial proceeding and the order passed by the District Judge is a judicial order. However, while granting leave the rights of the parties are not adjudicated and at this stage the court has merely to see whether there is a prima facie case that should be allowed to be filed. By giving consent the court does not affect the rights of the parties against whom the suit is filed as after granting of the leave the parties will have an opportunity to present their case before the Court in which the suit is filed. As at the time of granting the leave the District Judge will have to see only a prima facie case the conclusion of the District Judge will in no way affect or influence the final decision which will be given in the suit after the parties had led evidence. So far as Section 92 Code of Civil Procedure is concerned, it does not

contemplate of giving any notice to the proposed defendants before granting the leave.”I

29. In view of the foregoing discussion, this Court is of the considered view that the reasons given by the Civil Judge has no jurisdiction to entertain a suit filed under Section 92 C.P.C. or under the provisions of the Religious Endowment Act, 1863 and, therefore, the observations made by the Civil Judge in the impugned order dated 13.08.2024 are without jurisdiction.
30. Accordingly, the petition is ***allowed***. The observations made by the Civil Judge regarding admissibility of the suit in the impugned order dated 13.08.2024 passed in Miscellaneous Case No.160 of 2024 having been made without jurisdiction, are set aside. The petitioner is granted a liberty to file a fresh suit in the Principal Civil Court of original jurisdiction in the District, i.e. the Court of the District Judge, Pratapgarh, after seeking leave of the Court and the District Judge shall proceed with the same in accordance with the law, keeping in view the observations made in this order. It is clarified that any observation made in this order will not affect the decision of the merits of the claims of rival parties.

(Subhash Vidyarthi, J.)

Order Date: 24.09.2024

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