CS 2187/16
Saroj Bala & Ors. v. Pawan Lal & Ors.

27.07.2021

Vide office order dt. 19.04.2021 of Delhi High Court only the urgent cases were directed to be taken in view of second wave of Covid-19 and all other matters were directed to be adjourned en-bloc. Thereafter vide office dt. 14.05.2021 summer vacations were declared from 17.05.2021 till 03.06.2021 and with effect from 03.06.2021 only urgent matters were to be taken up for hearing and the rest were to be adjourned en-bloc. Then vide office order dt. 28.06.2021 it was directed that cases of final arguments and urgent matters shall be taken up for hearing and the rest shall be adjourned.

Pr: Counsel Sh. Sudhir Gupta for plaintiffs, through video conference.

Counsel Sh. Anil Gera for D-1 and D-2, through video conference.

Counsel Sh. Pankaj Garg for LRs of D-4 Shakuntala, except LR(d), through video conference.

Counsel Sh. Inderdeep Singh for D-5 Trust, through video conference.

In terms of transfer/posting order no. 12/G-I/Gaz.1A/DHC/2021 dt. 20.07.2021 I have been transferred to the court of ASJ (Electricity), Dwarka, South West, Delhi with immediate effect. Note 3 of the said transfer/ posting order mandates that all the reserved judgments/ orders shall be pronounced notwithstanding the posting/ transfer on the date fixed or within a period of 2-3 weeks thereof.

1. Clarifications obtained from counsel Inderdeep Singh.

2. The issue is whether written statement, filed on 04.03.2020, by Pandit Chander Haas Guru Mandir Trust (defendant no.5) be struck off or not. Arguments on this aspect were heard on 24.02.2021. Submissions heard. Record perused.

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3. The factual matrix under which this issue arises may first be taken note of.

I) This is a suit for partition, permanent injunction and rendition of accounts. The rendition of accounts was sought from defendant no. 4 Shakuntala Devi qua the income realised from a Gurudwara property, that is, house no. IX/7364-65, Gandhi Nagar, Delhi – 31. During pendency of this case, Shakuntala Devi created a registered Trust by the name of Pandit Chander Haas Guru Mandir Trust vide a Trust Deed dt. 04.07.2004 and which Trust was specifically for managing the Gurudwara affairs. The trustees of this Trust are the four daughters of Shakuntala Devi. Shakuntala Devi left for heavenly abode on 24.02.2011. Prior to her demise, she had executed a registered Will on 02.12.2009 and qua which Letters of Administration already stands granted by Delhi High Court vide judgment dt. 13.04.2018.

II) On 08.03.2018 defendant no.1 Dr. Pawan Lal moved an application under Order I Rule 10 read with section 151 of CPC to implead Pandit Chander Haas Guru Mandir Trust as a '*party to the proceedings as the said Trust is managing the said property bearing No. IX/7364, Anand Mohalla, Gandhi Nagar, Delhi*'. Plaintiffs in their reply, filed on 04.06.2018, opposed this application.

III) Vide order dt. 02.09.2019 the aforesaid application Order I Rule 10 read with section 151 of CPC was allowed. The court observed that Pandit Chander Haas Guru Mandir Trust ought to be impleaded as a co-defendant. Operative portion of the order dt. 02.09.2019 reads as follows:

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> *"To a Court query today from plaintiffs' proxy counsel as to who, as per the plaintiffs, is managing the affairs of Gurudwara, he replies that he has instructions from the main counsel not to oppose the application under consideration. That apart, the plaintiffs in their reply do not actually state that no such Trust was created but their stand is that the Trust was created to defraud them and to misappropriate the money/donation received in Gurudwara and that the same was created only on papers. Given the specific averments in the application to which there is no categorical denial that no such Trust has in fact been created for managing Gurudwara affairs and in view of the no objection on behalf of the plaintiffs, this Court is of the view that Pandit Chander Haas Guru Mandir Trust ought to be impleaded as a co-defendant. It is ordered accordingly. The aforesaid application is allowed."*
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> *(underlined for emphasis)*

IV) Pandit Chander Haas Guru Mandir Trust then filed its written statement on 04.03.2020. It was then that plaintiffs' counsel took an objection that Pandit Chander Haas Guru Mandir Trust could not have been allowed to file its written statement as it stepped into the shows of late Shakuntala Devi and that it cannot toe a different line of defence other than the one taken by late Shakuntala Devi. It is in this context that this issue arises.

4. Plaintiffs' counsel's contention was that Trust (D-5) having stepped into the shoes of D-4/late Shakuntala cannot take a different line of defence, other than the one taken by D-4/ late Shakuntala; that D-5 Trust cannot file separate written statement of its own; that D-5/Trust has to adopt written statement of D-4/late Shakuntala. In this regard, plaintiffs' relied on the report of Manju Parthi v. Rohit Parthi, 2007 (145) DLT 354. It was further his contention that D-4/late Shakuntala died on 24.02.2011 and Trust was created in 2004; that D-5/Trust came to be involved only because it was

bequeathed the property and such bequeathment in terms of the Will could have taken place only on Shakuntala Devi's demise and not before; that D-5/Trust did not pray or seek permission to file written statement of its own; that the application to implead the Trust was filed under the wrong provision of law as the same ought to have been filed under Order XXII of CPC; that title of the application is not material, and what is material are the contents of application.

5. On the other hand, counsel Sh. Inderdeep Singh for the Trust submitted that D-5/Trust was arrayed as co-defendant under Order I Rule 10 of CPC and not under Order XXII of CPC; that Order 1 Rule 10 (5) permits D-5/Trust to file its written statement; that in Sumtibai & Others v. Paras Finance Co., (2007) 10 SCC 82 it has been held that legal representatives of deceased/defendant may file their own written statement. He furnished on record copy of PAN Card and copy of Income Tax papers of D-5 Trust to contend that the said Trust is a legal entity and a registered Trust.

6. Having heard the submissions and perused the record of the case, I am of the view that plaintiffs' contentions cannot be accepted. What was filed was an application under Order I Rule 10 read with section 151 of CPC with the specific prayer that Trust be added as a '*party to the proceedings as the said Trust is managing the said property bearing No. IX/7364, Anand Mohalla, Gandhi Nagar, Delhi.* And the plaintiffs knew all this very well. The plaintiffs, in their reply or at the time when the order was passed took no objection that the application ought to be one under Order XXII of CPC. More importantly, the order dt. 02.09.2019 was passed on the concession given by the plaintiffs. The plaintiffs had stated that they

had no objection if the application under Order I Rule 10 read with section 151 of CPC was allowed. Plaintiffs' counsel very well knew the legal implications of adding someone as a co-defendant to a suit under Order I Rule 10 of CPC. The legal implications of invoking Order XXII Rule 4 of CPC are completely different than that of Order I Rule 10 of CPC. Plaintiffs' counsel would surely have been very well aware of this when he gave his no-objection into allowing the application under Order I Rule 10 read with section 151 of CPC. Given this, I do not think that the written statement of Trust, which is already filed on record, can now be ordered to be taken off the record.

7. It was the contention that the Trust did not pray or seek permission to file written statement of its own and as such it could not have filed its written statement. This argument cannot be accepted. The very obvious implication of adding someone as a '*co-defendant*' is that he/she can proceed to file his/her written statement. It would be an unusual scenario where one is added as a co-defendant under Order I Rule 10 of CPC, but is told that it cannot file its written statement unless specifically told to do so. Filing of written statement by someone who is added as a co-defendant under Order I Rule 10 of CPC, subject to all just exceptions, follows a matter of course, just as the night follows the day.

8. It was next the argument that the application to implead the Trust was filed under the wrong provision of law as the same ought to have been filed under Order XXII of CPC; that title of the application is not material, and what is material are the contents of the application. But the fact of the matter is that the plaintiffs, with their eyes wide open, had given their

concession into allowing the said application under Order I Rule 10 read with section 151 of CPC. That apart, I see no patent illegality in the Order dt. 02.09.2019. At the most one could say that there is irregularity therein. But, it is my view that there is no patent illegality in the said order. That apart, it was not specifically pointed out as to which line of defence of Trust was contrary and/or opposite to the line of defence taken by Shakuntala Devi. Further, what is essential is that late Shakuntala Devi's estate ought to have been represented. And this representation came to take place under Order I Rule 10 of CPC and not Order XII of CPC on the concession given by plaintiffs.

9. In view of the aforesaid discussion, I am not inclined to accept the contentions of the plaintiffs. I answer the aforesaid issue in favour of the Trust and against plaintiffs. List on **01.09.2021** for consideration on other miscellaneous application(s).

MURARI PRASAD SINGH

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(M. P. Singh)
Presently ASJ (Electricity),
South West, Dwarka Courts
Delhi

Earlier ADJ-03, East District,
Karkardooma Courts
Delhi/27.07.2021