

HIGH COURT OF ALLAHABAD**Bench: Hon'ble Vipin Chandra Dixit, J.****Date of Decision: 30th May 2024**

FIRST APPEAL FROM ORDER No. 1890 of 2023

LAXMAN SAHGAL ...APPELLANT**VERSUS****DINESH BAJPAI AND 6 OTHERS ...RESPONDENTS****Legislation:**

Order 40, Rule 1, Section 92, 151 of the Code of Civil Procedure, 1908 (C.P.C.)

Subject: Appeal against the order appointing a receiver for the trust property, challenging the trial court's finding that the trust is a public religious trust and the misappropriation of trust funds by the appellant.

Headnotes:

Civil Procedure - Appointment of Receiver - Appeal against trial court order allowing application under Order 40 Rule 1 read with Section 151 C.P.C. – Trust created by will deed dated 25.02.1925 - Dispute over the nature of trust as public or private - Trial court appointed receiver due to mismanagement and misappropriation of trust funds by appellant – Held, no urgency or adequate reasoning provided by trial court for appointing receiver - Trust declared as public religious trust by trial court and appellant's claim of it being a private trust rejected - Appeal dismissed, trial court's decision upheld. [Paras 1-17]

Trust Law - Nature of Trust - Analysis - Held - Trust created by late Jai Narain through will deed dated 25.02.1925 is a public religious trust - Trustees appointed by original creator deceased - Subsequent

management by appellant and others misused trust funds - Trust income utilized for personal use by appellant - No proper account maintained - Trial court's finding of public trust status affirmed. [Paras 6-10, 16]

Civil Procedure - Competency to File Application for Receiver - Analysis - Held - Application under Order 40 Rule 1 C.P.C. can be filed by any party interested in proper management of trust property - Defendant no. 5's application valid despite not being transposed as plaintiff - Court can appoint receiver if just and convenient, even at instance of stranger. [Para 14]

Decision - Appointment of Receiver - Court upholds trial court's decision to appoint receiver due to mismanagement by appellant - Appeal dismissed, ensuring protection and proper administration of trust property. [Paras 16-17]

Referred Cases:

- T. Krishnaswamy Chetty v. C. Thangavelu Chetty and others, AIR 1955 Mad 430
- Bhaskar Aditya v. Smt. Minati Majumdar and others, AIR 2003 Cal 178
- Sree Venkataramana Temple Board of Education v. C. Manjunatha Kamath, AIR 1974 Kant 59
- Ramanarayan Popli v. CBI (2003) SCC (Cr.) 869
- P.K. Narayanan v. State of Kerala (1995) 1 SCC 142

Representing Advocates:

Saurabh Srivastava for appellant

Girja Shanker Mishra, Nigamendra Shukla, Pratiksha Rai for respondents

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Hon'ble Vipin Chandra Dixit, J.

1. This first appeal from order under Order 43 Rule 1(s) C.P.C. has been filed by appellant / defendant no. 1 against the order dated 31.10.2023 passed by Additional District Judge, Court No. 12, Kanpur Nagar, in Misc. Case No. 05 of 2014, arising out of Original Suit No. 103/74 of 2011 (Dinesh Bajpai & Others vs. Laxman Sahgal & Others), by which application filed by defendant no. 5 under Order 40 Rule 1 read with Section 151 C.P.C. was allowed and Sri Yogesh Chandra Mehrotra was appointed as receiver of trust property.

2. Heard Sri Saurabh Srivastava, Learned counsel for the appellant, Sri S.K. Verms, learned Senior Advocate assisted by Sri S.S. Mishra, Ms. Pratiksha Rai and Sri Vinayak Verma, learned counsel for respondent no. 4 and perused the record.

3. Brief facts of the case is that the plaintiff / respondent nos. 1 to 3 had filed a suit under Section 92 C.P.C. with the prayer that defendant nos. 1 and 2 be removed from the post of Sarvarakar and new Sarvarakar be appointed. It is also prayed that the scheme of administration of trust be settled for its proper administration and will deed executed by Smt. Ganga Devi dated 27.08.1982 be declared as null and void.

4. It is pleaded by the plaintiffs that one Bhajju Lal was the owner of house situated in Generalganj Kohna, Kahoo Kothi, Kanpur Nagar. He executed a gift deed on 06.10.1883 and gifted 1/2 portion of said house to Smt. Krishna and 1/4 portion to Smt. Gaura. The remaining 1/4 portion he retained for himself. Municipal no. 55/29 was allotted for the portion of Smt. Krishna, 55/30 was allotted for the portion of Smt. Gaura and 55/28 was allotted for the 1/4th portion belonging to Bhajju Lal.

5. After the death of Bhajju Lal, House No. 55/28 was inherited by his son Jai Narain. Jai Narain executed a will deed on 25.02.1925 in favour of his wife Smt. Bhagwan Dei with limited ownership for her lifetime and after her

death, there would be a public religious trust in the name of “Thakur Dwara Bhajju Lal Jai Narain” and the property would be vested in the name of Deities “Sri Thakur Behari Ji Ram Chandra Ji Seeta Ji Laxman Ji Mahaveer Ji Shankar Ji Virajman Mandir”/respondent no.7. Seven trustees were appointed by Jai Narain through his will deed dated 25.02.1925. All the trustees appointed by late Jai Narain have died. Smt. Bhagwan Dei had executed will deed on 22.06.1965 and gifted house no. 55/28 in favour of deities. Smt. Gaura Devi had already executed will deed on 16.05.1936 and gifted house no. 55/30 in favour of deities/respondent no.7. In view of above, house no. 55/28 and 55/30 are declared religious public trust properties.

6. Bhagwan Dei has executed a will deed on 22.06.1965, appointed Baij Nath Sahgal as Sarvarakar and after his death his wife Ganga Devi as Sarvarakar of trust. Baij Nath Sahgal died during the life time of Smt. Bhagwan Dei and after the death of Smt. Bhagwan Dei, Smt. Ganga Devi had managed the trust as Sarvarakar. Smt. Ganga Devi has treated the trust as private property and had executed a registered will deed on 07.08.1982 in favour of her daughter Smt. Jogeshwari Devi and appointed her as Sarvarakar of the trust. It is also provided by Ganga Devi in will deed dated 07.08.1982 that Smt. Jogeshwari Devi will utilize the income of trust for her personal use as well as for her maintenance.

7. It is also pleaded by the plaintiffs that the trust created by Late Jai Narain is a religious public trust and as such, the income of trust property cannot be used for personal use by Smt. Jogeshwari Devi. Smt. Jogeshwari Devi had acted against the terms and conditions of the will deed executed by creator of public trust, has nominated Laxman Sahgal (present appellant) as a Sarvarakar. Since, the income of the trust property was utilized by Ganga Devi, Jogeshwari Devi and Laxman Sahgal who are not family members of creator of original public trust and as such, they have no right

to appoint any Sarvarakar for management of trust property. The income of trust property is utilized by defendant nos 1 and 2 for their personal use and they had constructed a new building after demolition of temple and the building is let out on rent. They are receiving huge amount from the tenants as “Pagdi” and misappropriated the fund of public trust.

8. The trial court after considering that the trust was created by late Jai Narain is a religious public trust, has allowed the application under Section 92 C.P.C. vide order dated 08.08.2014. The order dated 08.08.2014 passed in Case No. 103/74 of 2011 was never challenged by anyone in the higher court and as such, the order dated 08.08.2014 has become final. The trust created by Jai Narain is accepted as public trust, as the application under Section 92 C.P.C. was allowed by the trial court.

9. During the pendency of suit, an application under Order 40 Rule 1 C.P.C. has been filed on behalf of respondent no. 4 who is defendant no. 5 in the suit to appoint receiver on the ground that the trust created by Jai Narain is a religious public trust and the defendants are utilizing the income of public trust for their personal use. A new building was constructed as Sahgal Market after demolition of temple and they have misappropriated the fund of trust. The appellant / defendant no. 1 had filed objection stating therein that the trust is a private trust.

10. The trial court after considering the objection of defendant no. 1 has recorded the finding that it is admitted fact that the income of trust is utilized by defendant no. 1 and he has not maintained any account of income and expenditure of trust and not even a bank account was opened in the name of defendant no.4 to deposit the income of trust. The trust created by Late Jai Narain is a public religious trust and Bhagwan Dei has no right to appoint Sarvarakar. The Sarvarakar appointed by Smt. Bhagwan Dei was without any authority and Sarvarakar appointed subsequently be removed.

11. The application filed by respondent no. 4 who is defendant no. 5 under Order 40 Rule 1 read with Section 151 C.P.C. being Misc. Case No.05 of 2014 was allowed by Additional District Judge, Court No. 12, Kanpur Nagar vide order dated 31.10.2023, which is impugned in the present appeal.

12. It is submitted by learned counsel for the appellant that trial court has erred in allowing the application filed under Order 40 Rule 1 read with Section 151 C.P.C. without recording any finding in respect of urgency to appoint receiver. It is further submitted that the trust created by Late Jai Narayan through will deed dated 25.2.1925 is a private trust and as such provisions of Section 92 C.P.C. is not applicable in the present case and the suit filed by plaintiff itself was not maintainable. It is further submitted that the suit filed by plaintiff respondent nos.1 to 3 was withdrawn on the application filed by plaintiffs vide order dated 12.7.2016 which was recalled on the application moved by respondent no.4 who has yet not been transposed as plaintiff and as such he was not competent to file application to appoint receiver. Lastly, it is submitted that learned trial court has failed to comply the specific directions issued by this Court dated 8.2.2023 passed in Matters under Article 227 No.263 of 2023. It is further submitted that trial court has failed to consider that the suit itself was dismissed on the application filed by plaintiff for withdrawing the suit. The respondent no.4 who was defendant no.5 in the suit was not competent to file application under Order 40 Rule 1 read with Section 151 C.P.C. Learned counsel for appellant has placed reliance on the judgment of Hon'ble Madras High Court in the case of T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and others, reported in AIR 1955 Madras 430. The relevant paras 13 and 14 are quoted herein below:-

“13. The five principles which can be described as the 'panch sadachar' of our Courts exercising equity jurisdiction in appointing receivers are as follows :

(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding : -- 'Mathusri v. Mathusri', 19 Mad 120 (PC) (Z5); -- 'Sivagnanathammal v. Arunachallam Pillai', 21 Mad LJ 821 (Z6); -- 'Habibullah v. Abtiakallah', AIR 1918 Cal 882 (27); -- 'Tirath Singh v. Shromani Gurudwara Prabandhak Committee', AIR 1931 Lah 688 (28); -- 'Ghanasham v. Moraba', 18 Bom 474 (7.9); -- 'Jagat Tarini Dasi v. Nabagopal Chaki', 34 Cal 305 (Z10); -- 'Sivaji Raja Sahib v. Aiswariyanandaji', AIR 1915 Mad 926 (Z11); -- 'Prasanno Moyi Devi v. Beni Madbab Rai', 5 All 556 (Z12); -- 'Sidheswari Dabi v. Abhayeswari Dahi', 15 Cal 818 (213); -- 'Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das', AIR 1925 Lah 349 (Z14); -- 'Bhupendra Nath v. Manohar Mukerjee', AIR 1024 Cal 456 (Z15).

(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit. -- 'Dhumi v. Nawab Sajjad Ali Khan', AIR 192.3 Uh 623 (Z16); -- 'Firm of Raghbir Singh' Jaswant v. Narinjan Singh', AIR 1923 Lah 48 (217); -- 'Siaram Das v. Mohabir Das', 27 Cal 279 (Z18); -- 'Mahammad Kasim v. Nagaraja Moopnar', AIR 1928-Mad 813 (Z19); -- 'Banwarilal Chowdhury v. Motilal', AIR 1922 Pat 493 (220).

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right, he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. -- "Manghanmal Tarachand v. .Mikanbai", AIR 1933 Sind 231 (221); -- 'Bidurramji v. Keshoramji', AIR 1939 Oudh 31 (Z22); -- 'Sheoambar Ban v. Mohan Ban', AIR 1941 Oudh 328 (223).

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through, fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less 'in medio' is sufficient to vest a Court with jurisdiction to appoint a receiver. -- 'Nilambar Das v. Mabal Behari', AIR 1927 Pat 220 (Z24); -- 'Alkama Bibi v. Syed Istak Hussain', AIR 1925 Cal 970 (Z25~.); -- 'Mathuria Debya v. Shibdayal Singh', 14 Cal WN 252 (Z26); -- 'Bhubaneswar Prasad v. Rajeshwar Prasad', AIR 1948 Pat 195 (Z27). Otherwise a receiver should not be

appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disentitled himself to the equitable relief by laches, delay, acquiescence etc.

14. To sum up as stated in -- 'Crawford V. Ross', 39 Ga 44 (Z28),

"The high prerogative act of taking property out of the hands of one and putting it in pound under the order of the Judge ought not to be taken except to prevent manifest wrong imminently impending."

In 'Dozier v. Logan', 101 ga 173 (Z29) Atkinson J. said

"The appointment of a receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the creditors is exposed to manifest peril,"

Therefore, this exceedingly delicate and responsible duty will be discharged with the utmost caution and only when the 'panch sadachar' or five requirements embodied in the words just and convenient (Order 40, Rule 1) are fulfilled by the facts of the case under consideration -- ('Ramachandrayya v. Nethi Iswarayya', AIR 1952 Hyd 139 (Z30))."

13. It is further submitted that appellant is Sarvakar of the trust property which is a private trust and the trial court has erred in allowing the application under Order 40 Rule 1 C.P.C. appointing Sri Yogesh Chandra Mehrotra as receiver of the trust property.

14. On the other hand, learned Senior Advocate appearing on behalf of respondent no.4 (defendant no.5) submits that an application under Section 92 C.P.C. accompanied by plaint was filed by the plaintiffs with the prayer to remove the defendant no.1 (present appellant) and defendant no.2 Smt. Jageshwari Devi (died during the pendency of suit) from the post of Sarvakar/trustee of respondent no.7 and for the trust properties bearing house no.55/28 and 55/30 Generalganj, Kahu Kothi, Kanpur a new Sarvakar/trustee be appointed. It is further submitted that application filed under Section 92 C.P.C. was allowed on 8.8.2014 and the plaint accompanying with the application filed under Section 92 C.P.C. was admitted which itself proves that the trust created through will deed dated 25.2.1925 was a public trust. The order dated 8.8.2014 passed by Additional District Judge, Court No.23 in Case No.103/74 of 2011 was not challenged by anyone to higher court and the order dated 8.8.2014 becomes final. The recall application filed by respondent no.4 for recalling of order dated 12.7.2016, by which the suit was withdrawn by the plaintiffs was allowed on 8.12.2022 and the order dated 12.7.2016 was set-aside. The order dated 8.12.2022 was affirmed by this Court vide judgment and order dated 8.2.2023 in the Matter under Article 227 No.263 of 2023. The order dated 12.7.2016 was set-aside and the suit filed for removing the appellant from Sarvakar/trustee was restored and the suit is pending for consideration. It is further submitted by learned Senior Advocate that learned trial court has recorded the finding after considering the objection of appellant against the application filed under Order 40 Rule 1 C.P.C. that the appellant has misused the income of trust property for his personal use. The appellant has not maintaining the record of income and expenditure of trust property and not even a bank account was opened in the name of deities/respondent no.7 by appellant to deposit the income of trust property. The trial court has further recorded that the appellant has misused the income of the trust property treating the trust property as

private trust. The trial court after considering the entire materials has found that the trust created by Sri Jai Narayan was a public trust and the appellant is misappropriated the funds of trust property, has rightly allowed the application vide order dated 31.10.2023 appointing receiver to manage the trust property and to deposit the income of trust property in the saving account in a nationalized bank. The order passed by learned trial court appointing receiver looking the urgency in the matter as the trust property and its income was misused by appellant.

15. Considered the rival submissions of learned counsel for the parties and perused the record.

16. The suit filed by plaintiff/respondent nos.1 to 3 along with application under Section 92 C.P.C. with the prayer to remove the defendant nos.1 and 2 from the post of Sarvakar/trustee and to appoint new Sarvakar/trustee. It is also prayed in the suit that scheme of administration of trust be settled for its proper administration and will deed executed by Smt. Ganga Devi be declared as null and void. It was the case of plaintiffs that trust created by Late Jai Narayan is a religious public trust. The seven trustees appointed by Late Jai Narayan are no more. Smt. Jageshwari Devi without any authority has nominated the appellant as Sarvakar/trustee. The appellant and respondent no.6 Smt. Jageshwari Devi (now deceased) had utilized the income of the trust property for their personal use. They had also constructed a new building after demolition of temple and let out the building on rent after receiving huge amount from the tenants and had misappropriated the fund of public trust. The trial court after found that the trust created by Late Jai Narayan is a religious trust and has allowed the application under Section 92 C.P.C. vide order dated 8.8.2014 in Case No.103/74 of 2011. The order dated 8.8.2014 was never challenged by anyone and as such it becomes final. The trust was accepted as public trust. The appellant/defendant no.1 claims that the trust

is a private trust and since he was nominated as Sarvakar/trustee he is authorized to utilize the income of trust property for his personal use. The appellant has also constructed a market in the name of Sahgal Market after demolition of temple. Since the income of trust property was misappropriated by the appellant/defendant no.1, the respondent no.4/defendant no.5 had moved the application for removal of appellant and Smt. Jageshwari Devi (now deceased) from the post of Sarvakar/trustee. The application was contested by the appellant by filing objection stating therein that the trust is a private trust and being a Sarvakar/trustee he has right to remove idol/statue and also utilize the income from trust property for his personal use. From the own case of appellant he was utilizing the income of trust property without maintaining any account of income and expenditure of trust property. It is also admitted fact that he has not opened any bank account to deposit the income of trust property. Learned trial court after considering the objection filed by present appellant found that the trust is a public religious trust and admittedly the appellant is utilizing the income of trust property for his personal use treating the same as private trust. The argument raised by learned counsel for appellant that application under Order 40 Rule 1 C.P.C. filed on behalf of defendant no.5 was not maintainable as the application filed for transposition is still pending is not tenable. It is not provided under said provision that who is authorized to apply for appointment of receiver and the court is empowered to appoint receiver when the court finds just it to appoint a receiver to safe the trust property even on the application of stranger. In the case of Bhaskar Aditya Vs. Smt. Minati Majumdar and others reported in AIR 2003 CALCUTTA 178, it has been held that court can appoint receiver whenever it appears to the court to be just and convenient. Relevant paragraph nos.11 & 11.1 are reproduced herein below:-

“Appointment of Receiver at the instance of stranger :

11. Order 40, Rule 1, C.P.C. empowers the Court to appoint a receiver when it is just and convenient. It has not prescribed any criteria for the purpose of appointment of receiver. The Court can appoint receiver whenever it appears to the Court to be just and convenient. In a suit for partition, it is immaterial whether the application is made by the co-owners or by a stranger. If the question is brought before the Court, it is for the Court to consider whether it is just and convenient to appoint a receiver. The appointment of receiver is conceived for the purpose of management of a property and saving it from being wasted or dissipated, protecting the interest of the respective parties. If it is necessary for the purpose of protecting the interest of the respective parties, if there are materials before the Court to come to the conclusion that it is just and convenient, the Court has every right to appoint a receiver. In *Sree Venkataramana Temple Board of Education, Karkala v. C. Manjunatha Kamath*, AIR 1974 Kant 59 (Para 4), it was held that even a stranger can apply for appointment of receiver. After having gone through the reasoning given in the said decision we do not find any reason to differ from the same and we adopt the same reasoning in this case.

11.1 The decisions in *Ishwara Joisha v. Saraswathi Amma*, AIR 1959 Mysore 35 at p. 36; *Ravi Lakshmaiah v. Nagamothu Lakshmi*, AIR 1971 Andh Pra 380 at p. 381 and *Nirml Kumar Moulik v. Smt. Champabala Roy*, AIR 1971 Cal 407 cited by Mr. Saktinath Mukherjee, lay down the proposition that upon an application for injunction, it is open to the Court to appoint receiver even suo motu : In *Ganpat Pralhad v. Pralhad Madhoba Ruikar Trust*, AIR 1952 Nagpur 253, cited by Mr. Saktinath Mukherjee, it was held that the Court can appoint receiver at the instance of a non-party provided protection and preservation of the property is necessary.”

17. Considering the facts and circumstances of the case, this court found that the income of trust property is mismanaged by appellant, who was defendant in the suit and had utilized the income of trust property for his personal use treating the trust as private trust. The trial court has rightly allowed the application filed under Order 40 Rule 1 C.P.C. and to appoint receiver to safeguard the interest of trust property. There seems no illegality or irregularity in the order impugned. No ground for interference is made out. The appeal is devoid of merit and is liable to be dismissed.

17. The appeal is dismissed, accordingly.

18. Interim order, if any, stands discharged.

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