

circumstances. The detailed order of the Land Acquisition Collector that is under consideration itself provides more than ample material which should have impelled him to make reference of the dispute between the parties to the Court, and it is obvious that he failed to exercise jurisdiction when this is an eminent case in which reference should have been made. So this argument on the side of the respondents is accepted, the order, dated November 24, 1965, of the Land Acquisition Collector is quashed, and he is directed to make a reference of the dispute between the parties to the Court under the Act.

A curious result has followed on the application by the applicants for to an extent, it is the prayer of the respondents that is being allowed in this revision application. With the direction above the application of the applicants is accepted, but, in the circumstances of the case, there is no occasion for an order in regard to costs.

B.R.T.

REVISIONAL CIVIL

Before Shamsher Bahadur, J.

BRIJ LAL AND OTHERS,—*Petitioners.*

versus

RAJ KUMAR AND OTHERS,—*Respondents.*

Civil Revision No. 1048 of 1965.

May 4, 1966

Code of Civil Procedure (V of 1908)—S. 92—Suit under—Scheme for management of a religious institution settled—Scheme not providing machinery for appointment of trustees—Court—Whether can be called upon to make the Scheme work in execution of that decree.

Held, that where in a suit under section 92 of the Code of Civil Procedure, a scheme for the management of a religious institution is settled by decree but no machinery is provided in the scheme for the appointment of the trustees, the Court cannot be called upon to make the scheme work in execution of the decree.

Brij Lal, etc. v. Raj Kumar, etc. (Shamsher Bahadur, J.)

Petition under Section 115 of the Code of Civil Procedure, for revision of the order of the Senior Sub-Judge, Ambala, dated the 16th August, 1965, dismissing the application as being not admissible and the applicants having no locus standi in the matters.

HANS RAJ AGGARWAL, ADVOCATE, for the Petitioners.

R. N. MITTAL, JINENDRA KUMAR SHARMA AND R. C. DOGRA, ADVOCATES, for the Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—This is a rule directed against the order of the Senior Subordinate Judge, Ambala, dismissing the application of the petitioners under section 92, read with section 151 of the Code of Civil Procedure.

A preliminary decree was passed by the Senior Subordinate Judge, Ambala, on 6th of November, 1941, in a suit brought by Pt. Hari Chand Brahmin, against Ruli Chand and Nand Lal Aggarwal. The suit was concerned with the management of a Dharamshala in Jagadhari. It appears that in the suit which was brought under the provisions of section 92 of the Code of Civil Procedure, a compromise was reached between the representatives of the two communities and the preliminary decree removed the existing trustees and in their stead one Gaur Brahmin and one Vaish were to be appointed as trustees of each community for the future. Pt. Piare Lal, President Gaur Brahmin Sabha, Jagadhari and L. Gokal Chand, Municipal Commissioner, Jagadhari, were appointed trustees "for the present". Though it was stated in the preliminary decree that one Gaur Brahmin and one Vaish "may be appointed trustees of each community for the future" no machinery was provided for their appointment. In a subsequent suit, also under section 92 of the Code of Civil Procedure, both Pt. Piare Lal, the representative of the Gaur Brahmins and Gokal Chand, representative of the Vaish community, were removed and in their stead Pt. Nand Kishore, for the Brahmins, and Raj Kumar for the Vaishas, were appointed on 3rd November, 1955. Thereafter, Pt. Nand Kishore, tendered his resignation and he was replaced by Pt. Radha Kishan, who continued to work along with Raj Kumar. On Raj Kumar's death in July, 1964, an application was moved by Brij Lal, Jai Parkash, Mangal Sain and Balbir Parkash, who described themselves as beneficiaries of the trust, under sections 92 and 151 of the Code of Civil Procedure to appoint a Vaish member in pursuance of the scheme which had been sanctioned by the preliminary decree of 6th of November, 1941. Holding that the Court could not act in execution of the preliminary decree the application was dismissed and the petitioners have come in revision to this Court.

The counsel for the respondents has placed reliance on a Division Bench judgment of the Madras High Court (Burn and Lakshmana Rao, JJ.), in *Ramanathan Chettiar v. Durainswami Naidu* (1), where it was held that "in a scheme suit under section 92, when once a decree settling a scheme has been passed, the Court has done its duty and is not to be called upon in the execution department to make the scheme work". It seems to me that though the scheme had settled the appointment of one member of Gaur Brahmins and one of the Vaish community to be the trustees of the temple, no machinery had been provided for their appointment. In case of vacancy, how can the Court be called upon to fill a lacuna which has been left in the scheme? It is significant that the petitioners themselves in a subsequent suit had moved the Court for filling a vacancy. In the present instance, however, resort has been taken to have the desired object by way of execution. This in my opinion, cannot be done. Though there are some authorities which go to show that in some cases, a scheme can be enforced, Mr. Aggarwal, says that he would be satisfied if a direction is given to the Court concerned to treat this application as a suit under section 92.

I would accordingly remand these proceedings to the trial Judge with the direction that he should proceed with the application as if it were a suit under the provisions of section 92 of the Code of Civil Procedure. The petitioners of course would be called upon to pay the requisite court-fee and fulfil the other requirements of section 92. The counsel have been directed to cause their clients to appear before the Senior Subordinate Judge, Ambala, on 23rd May, 1966. The costs would be borne by the parties.

K.S.K.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

HARBANS SINGH MANN,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 168 of 1966.

May 4, 1966

Punjab Municipal Act (III of 1911)—Ss. 20 and 247—Punjab Municipal Election Rules (1952)—Rules 52 to 57 and 68—Respective scope of—Demi-official letter written to the Minister with a copy to the Deputy Commissioner.

(1) A.I.R. 1938 Madrs 256.