

Before : A. L. Bahri, J.

SYED MOHAMMAD YAHYA AND OTHERS,—*Petitioners.*

versus

SYED IFTIKHAR AHMAD AND OTHERS,—*Respondents.*

Civil Revision No. 2248 of 1990.

25th September, 1990.

Code of Civil Procedure (V of 1908)—Ss. 92 & 115, O. 39, Rls. 1 & 2—Grant of temporary injunction—Dispute relating to appointment/removal of Khalifa and Sajjada Nashin of Muslim shrine—Concurrent orders granting temporary injunction restraining defendants from interfering with the management of the Khalifa—Defendnats' revision dismissed by the High Court as no grounds for interference made out.

Held, that for the grant of interim relief in a suit the cardinal principle to be kept in view is that the plaintiff should show a *prima facie* case in his favour as well as balance of convenience. He has also to show that if such an injunction is not granted, he was to suffer irreparable loss. In every case of grant of interim relief these principles are to be kept in view. In the present case the plaintiff was appointed Sajjadanashin by the Community by a registered instrument. The duties of the Khalifa which were to be performed by the plaintiff were mentioned therein. The plaintiff had been managing the property of the Khangah and in this Court several documents have been produced showing that he had been maintaining regular accounts of income and expenditure. Except, as per allegations of the defendants that the plaintiff did not attend some meetings called by the Muslim brotherhood of Sirhind, there is no allegation of breach of terms and conditions of the contract or allegations against the moral character of the plaintiff. Since the plaintiff was admittedly appointed Khalifa Sajjadanashin, he has a right to hold the said office and as such to manage the properties of the Khangah *Prima facie* case is established. The balance of convenience would also be in favour of the plaintiff. If he is abruptly removed from the office of such a religious shrine it would cast a doubt regarding his competency and suitability of managing the property of the Khangah. By such appointment he more or less heads the Community in the matter of religious beliefs and performs rituals or ceremonies at the Khangah. When two Courts have found a case in favour of the plaintiff for the grant of interim injunction, the High Court should be slow in interfering with such a discretionary order passed by the Courts below.

(Para 10)

Petition under section 115 C.P.C. for revision of the order of the Court of Shri K. R. Mahajan, District Judge, Patiala, dated 1st August, 1990 affirming that of Shri D. K. Monga, PCS Sub Judge 1st Class

Fatehgarh Sahib, dated 15th June, 1990 passing an injunction restraining the defendant No. 1 to 3 till decision of the suit from interfering in the plaintiffs management in the capacities of Khaliffa and Sajjada Nashin of Khangah mentioned in the heading of the plaint and properties attached thereto, and further ordering that observations in this order are not meant to be an expression of opinion on merits of the main suit.

Claim : Suit for declaration.

Claim in Revision : For reversal of the order of both the courts below.

Arun Jain, Advocate with Sudhir Aggarwal, Advocate, for the petitioners.

S. N. Chopra, Advocate with S. K. Vij, Advocate, for the Respondents.

JUDGMENT

A. L. Bahri, J.

(1) This revision is directed against concurrent orders of the Courts below passed on application for the grant of interim injunction during pendency of the suit.

(2) The dispute relates to appointment/removal of *Khalifa* and *Sajjada Nashin* of a Muslim shrine known as *Khangah Alia Mojaddadia Roza Sharif*, Sirhind. The suit was filed by the present respondent Syed Iftikhar Ahmad, who was appointed as *Khalifa Sajjada Nashin* of the *Khangah* on April 7, 1988 by members of the Muslim community of Sirhind. The aforesaid members of the Muslim community, on October 24, 1989, alleged to have appointed Syed Mohammad Yahiya as the *Khalifa Sajjada Nashin* which led to the finding of the suit challenging the appoint of Syed Mohammad Yahiya with permanent injunction restraining the defendants from illegally and forcibly occupying and causing/creating nuisance in the *Khangah*. While contesting the suit it was alleged by the defendants that the office of *Khalifa/Sajjada Nashin* was hereditary. On the death of father of the petitioner who was *Khalifa Sajjada Nashin*, it was the petitioner who was to succeed. Since he was an infant child, the community appointed another person as *Khalifa Sajjada Nashin* with the clear understanding that on attaining majority the petitioner was to be installed as *Khalifa Sajjada Nashin*. Thereafter Syed Anis Ahmed father of the respondent was appointed as *Khalifa Sajjada Nashin* on the same terms and conditions and on

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his death Syed Iftikhar Ahmed, the respondent was appointed as such. The respondent executed an affidavit undertaking to abdicate the office on installation of the petitioner as Khalifa Sajjada Nashin. As already stated above, both the Courts ordered in favour of the plaintiff-respondent that he will continue to act as Khalifa and manage the properties attached to the Khanqah.

(3) The contention of the learned counsel for the petitioner-defendant is that office of Khalifa Sajjada Nashin is hereditary and since the petitioner was infant child on the death of his father he could not be appointed as Khalifa Sajjada Nashin and in 1947 when partition of the country took place, the petitioner shifted to Pakistan. Subsequently, he again came to India and started living in the Khanqah but could not be appointed as Khalifa Sajjada Nashin being a foreigner, he applied for obtaining citizenship of India and it was thereafter that when he became Indian Citizen, he was nominated as Khalifa Sajjada Nashin by the Community and thus there was no *prima facie* case in favour of the plaintiff-respondent. On the other hand it has been argued that the respondent having been validly appointed as Khalifa Sajjada Nashin by the Community on terms mentioned in the deed which was registered, he could only be removed if it was proved that he had committed breach of such terms. It has further been argued that the Muslim Community could not remove the plaintiff from the said office unilaterally and a suit was required to be filed for his removal under section 92 of the Code of Civil Procedure. After hearing counsel for the parties I find that no case for interference with the discretionary orders passed by the Courts below is made out.

(4) The phrases *Khankah* and *Sajjadanashin* were explained by the Privy Council in *Khwaja Muhammad Hamid v. Mian Mahmud and others*, 1922 Privy Council 384, it was observed as under :—

“——— a *khankah* is a monastery or religious institution where *dervishes* and other seekers after truth congregate for religious instruction and devotional exercises. It has generally been founded by a *dervish* or a *sufi* professing esoteric beliefs, whose teachings and personal sanctity have attracted disciples whom he initiates into his doctrines. After his death he is often revered as a saint, and his humble *takia* (or abode) grows into a *khankah* and his *durgah* (or tomb) into a *rauzah* (or *shrine*). The *khankah* is usually under the governance of a *sajjanashin* (the one

seated on the prayer mat) who not only acts as *mutwali* (or manager) of the institution, and of the adjoining mosque but also is the spiritual preceptor of the adherents. The founder is generally the first *sajjadanashin*, and after his death the spiritual line (*silsilla*) is extended by a succession of *sajjadanashins*, generally members of his family chosen by him or according to the directions given by him in his life-time, or selected by the *fakirs* and *murids*, and formally installed.—”

The aforesaid observations were relied upon by the Patna High Court in (*Syed Shah*) *Muhammad Kazim v. (Syed) Abi Saqhir and others* (1). After taking into consideration the provisions of Section 92 of the Code of Civil Procedure, it was held that a *Khalifa* or a *Sajjadanashin* could be removed from the office by having a recourse to the provision of Section 92 of the Code of Civil Procedure. Some grounds were also suggested that it must be shown that the man (*Khalifa* or the *Sajjadanashin*) is not only incompetent to manage the property, but that he is of such a low morality that his continuance as the superior of the sacred shrines and institutions is repugnant and undesirable. A *Sajjadanashin*, who is also a manager, may be deprived of managership, though he may be retained as *sajjadanashin*.

(5) Learned counsel for the petitioner has argued that in the facts of the present case the office of “*Khalifa* and *Sajjadanashin*” is hereditary one. He referred to some documents when in 1943 son of the previous *Sajjadanashin* was so appointed. However, the fact cannot be lost sight of that when the present petitioner’s turn came, for certain reasons, he was not appointed. May be, the petitioner was minor when his father who was *Sajjadanashin* died and on that account the petitioner could not act as such. The mere fact that it was recognised by the Community that on account of his minority he was not being appointed and in his place another person was being appointed who was also to act as guardian of the petitioner shows that the previous practice if any, of son of *Sajjadanashin* to succeed was factually not adhered to and thereafter, no doubt as and when *Sajjadanashin* was appointed including father of the plaintiff, in the deed itself it was so mentioned that the present petitioner would be appointed as *Sajjadanashin* either on his attaining majority or on his obtaining citizenship of India, as in the meantime the petitioner had shifted to Pakistan. The significant fact to

(1) A.I.R. 1932 Patna 33.

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be noticed here is that when the plaintiff-respondent was appointed as Sajjadanashin of this shrine there was no such condition imposed in the deed which was executed and registered. It has been argued on behalf of the petitioner that an affidavit was sworn by the plaintiff that he would abdicate the office on obtaining citizenship by the present petitioner. This condition in the affidavit is sought to be argued to be included as a condition of the contract which was executed and registered while appointing the plaintiff as Sajjadanashin. I am afraid, *prima facie*, at this stage this contention cannot be accepted. If the Community had thought it fit to incorporate such a condition in the contract which was executed and registered there was no reason why this condition could not be mentioned therein. When there is a contract between the parties they would be governed by the terms and conditions of the contract incorporated therein. Thus, there is force in the contention of the counsel for the plaintiff-respondent that in the absence of any breach in the contract on the part of the plaintiff he could not be arbitrarily removed from the office of Khalifa/Sajjadanashin. Further-more it was required of the Community or its members to file a suit for removal of the plaintiff from the office of the Khalifa/Sajjadanashin after taking necessary sanction as required under Section 92 of the Code of Civil Procedure.

(6) It is not disputed that the office of *Khalifa* or *Sajjadanashin* will be property for which a deed was to be executed and to be registered. In the present case such deeds were registered and by appointment of *Khalifa/Sajjadanashin* some rights in the property of the Khankah were to be acquired by the office-holder. Such a deed was required to be registered under section 17(1) of the Registration Act. In the case of religious endowment a office of Shebait and right to worship by turn, it was held that it amounted to transfer of rights in immovable property requiring a registered instrument. It was so held in *Ram Rattan (dead) by legal representatives v. Bajrang Lal and others* (2).

(7) Learned counsel for the petitioner has argued that since in the suit itself no prayer was made for the grant of permanent injunction, temporary injunction during pendency of the suit could not be granted. In support of this contention reliance has been placed on

(2) A.I.R. 1978 S.C. 1393.

the decision of the J. & K. High Court in *Amma Shah and another v. Ismail Shah and others* (3). It was held that when a plaintiff brings a suit for declaration of title on the basis of his possession and alleges that he apprehends an interference from the defendants he must before claiming an interim relief of temporary injunction specifically pray either for permanent or for mandatory injunction in the suit. The ratio of the aforesaid decision cannot be relied upon.

(8) The matter was considered by the Bombay High Court in *Kunj Behari v. Keshavlal Hiralal* (4). That was a case of property owner by a deity and the question was regarding its management and possession and it was held that the plaintiff need not have to sue for possession. The aforesaid decision was followed by Full Bench of this Court in *DAV College, Hoshiarpur Society, Hoshiarpur, through Balbir Singh its President v. Sarvada Nand Anglo Sanskrit Higher Secondary School, Managing Committee* (5), which was a case of Society managing the affairs of the educational institution—the school. The suit was for declaration that the plaintiff was entitled to the management and possession of the school and for injunction restraining the defendant from interfering with the plaintiff's management and possession. The suit was held to be maintainable.

(9) Learned counsel for the petitioner has further placed reliance on the decision of this Court in *Union of India v. Bakshi Amrik Singh* (6). That was a case of correction of date of birth and it was held that no injunction could be granted not to retire the plaintiff from service. The rule as laid down in that case is of no assistance in deciding the case in hand which is to be disposed of on its own peculiar facts. In a suit for declaration interim injunction could be granted, was also held by this Court in *Smt. Giano v. Bhim Singh and another* (7). The earlier decision of the Lahore High Court in *Bantu v. Lehna Das and others* (8), was relied upon.

(3) A.I.R. 1972 J&K 79.

(4) (1904) ILR 28 Bombay 567.

(5) A.I.R. 1972 P&H 245.

(6) A.I.R. 1963 Punjab 104.

(7) 1977 PLR 601.

(8) A.I.R. 1926 Lahore 523.

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(10) For the grant of interim relief in a suit the cardinal principle to be kept in view is that the plaintiff should show a *prima facie* case in his favour as well as balance of convenience. He has also to show that if such an injunction is not granted, he was to suffer irreparable loss. In every case of grant of interim relief these principles are to be kept in view. In the present case the plaintiff was appointed Sajjadanashin by the Community by a registered instrument. The duties of the Khalifa which were to be performed by the plaintiff were mentioned therein. The plaintiff had been managing the property of the Khankah and in this Court several documents have been produced showing that he had been maintaining regular accounts of income and expenditure. Except, as per allegations of the defendants that the plaintiff did not attend some meetings called by the Muslim brotherhood of Sirhind, there is no allegation of breach of terms and conditions of the contract or allegations against the moral character of the plaintiff. Since the plaintiff was admittedly appointed Khalifa Sajjadanashin, he has a right to hold the said office and as such to manage the properties of the Khankah. *Prima facie* case is established. The balance of convenience would also be in favour of the plaintiff. If he is abruptly removed from the office of such a religious shrine it would cast a doubt regarding his competency and suitability of managing the property of the Khankah. By such appointment he more or less heads the Community in the matter of religious beliefs and performs rituals or ceremonies at the Khankah. When two Courts have found a case in favour of the plaintiff for the grant of interim injunction, the High Court should be slow in interfering with such a discretionary order passed by the Courts below. It was so held by the Supreme Court in *Terene Traders v. Rameshchandra Jamnadas & Co. and another*, (9).

(11) The contention of the counsel for the petitioner is that only removal from the post of Khalifa is being challenged as the Community has appointed the petitioner as Khalifa Sajjadanashin,—*vide* registered deed, dated December 22, 1989. It was the Muslim Community (family), which had the power to either remove the plaintiff from the office aforesaid or to appoint another person as Khalifa and the suit will not be maintainable to challenge the removal. I am afraid, this contention cannot be accepted. The observations in this order are merely tentative for the purposes of disposal of the interim matter and they will not affect the suit which is to be decided after

affording opportunity to the parties to produce evidence in support of their respective allegations. At this stage it is not considered appropriate to determine as to whether the Muslim Community could remove a validly appointed Khalifa Sajjadanashin of the shrine. As already observed above, a civil suit could be filed for removal of Khalifa Sajjadanashin as provided under Section 92 of the Code of Civil Procedure. Likewise no further comment is made in respect of the affidavit of the plaintiff wherein he had undertaken to leave the office as and when the petitioner was to attain citizenship of India. This question was to be decided further on proof of the practice or convention relating to this shrine as to whether the successor was to be by inheritance to the office of Khalifa Sajjadanashin or he was to be appointed by the Community as and when vacancy occurred on account of the death of the office-holder or otherwise, some argument was addressed that qua some of the property the possession has already been taken by the petitioner. This assertion is controverted on behalf of the respondent *inter alia* alleging that key of such premises was obtained temporarily. Again no further detailed comments are made regarding this allegation. The judgment of this Court in *Gurdeep Singh versus State of Punjab and others* (10), on which reliance was placed on behalf of the plaintiff is not helpful in deciding the case in hand. It was held that the Court has no jurisdiction to restrain an act which reflects no legal wrong on plaintiff. The three other general principles to be kept in view were also reiterated. The question of legal wrong is to be decided on the facts of each case. The trial Court had directed the defendants to render accounts of the Government funds received by them and the expenditure carried out by them. Such an order was set aside by the High Court on a notice *suo motu* taken. Such is not the position in the present case.

(12) For the reasons recorded above, finding no merit in the revision, the same is dismissed with no order as to costs.

(13) Since the matter is pending in the trial Court since 1989 as direction is given to the trial Court to expedite the disposal of the suit.

R.N.R.