The net result, therefore, is that these petitions are allowed and the proceedings taken against the petitioner under section 14-A are quashed. In view of the scanty assistance we have received from the counsel for the parties, we will make no order as to costs.

GURDEV SINGH, J.—I agree.

K. S. K.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and R. S. Narula, J.

SOHAN SINGH,—*Appellant.*

versus

ACHHAR SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 271 of 1968

February 27, 1968.

Code of Civil Procedure (Act V of 1908)—S. 92—Suit under—Allegations to be made in the plaint in order to invoke jurisdiction of civil Court—Rent not being received by manager of a trust properly—Whether amounts to maladministration of the trust—Manager's wife and son leading immoral life—Such Manager—Whether qualified to continue.

Held, that in order to entitle qualified persons to invoke the jurisdiction of civil court under section 92 of the Code of Civil Procedure, they must allege in the plaint at least one of the two things, viz.—

(i) that there has been a breach of an express or constructive trust; or

(ii) that there is necessity of a direction of the Court.

If none of the two allegations is made in the plaint either expressly or by necessary implication, the foundation for a suit under section 92 is not laid. It is, however, not necessary that both the conditions should co-exist. The two requirements have been joined with the word 'or' and not with the word 'and'. Allegation of any one of them in the plaint is enough to satisfy the statutory requirement in this behalf. A suit without any allegation of breach of trust will be competent under section 92 if it is made out that a direction of the Court for administration of the trust is necessary.

Held, that when the manager of a religious shrine was not recovering rents regularly and had allowed them to accumulate this would by itself amount to maladministration of the trust.

Held, that the manager may not be personally liable either civily or criminally for the misconduct of his wife and son, he is certainly not a person qualified to continue as the manager of a religious shrine if he is not able to keep his family members living in the shrine under restraint and permits them to lead immoral life which is bound to have adverse moral influence on the visitors to the shrine. More so, when in the nature of things, visitors to the shrine must include not only adults but persons of adolescent age who may belong to either sex.

Letters Patent Appeal under Clause X of the Letters Patent from the judgment of the Hon'ble Mr. Justice P. C. Pandit in R. S. A. No. 723 of 1956, dated the 16th May, 1963, reversing that of Shri Rajinder Singh, Additional District Judge, Amritsar, dated 21st May, 1956 and restoring that of Shri Des Raj Dhameja Sub-Judge 1st Class, Amritsar, dated the 21st January, 1956.

N. S. Chhachhi and Jai Kishen Khosla, Advocates, for the Appellant.

B. S. Chawla, Advocate for respondent No. 1.

ORDER.

Narula, J.—In village Cheema Khurd. Tehsil Patti, District Amritsar, there is a *dharamsala* by the name of Baba Nanga. Sohan Singh appellant was its manager. Achhar Singh and four others, respondents before us, claiming to be worshippers of the said shrine, filed a suit in May, 1954, under section 92 of the Code of Civil Procedure, (after having obtained the requisite sanction of the Advocate-General, Punjab), for the removal of the appellant, for his eviction from the shrine and the property attached thereto, as well as for rendition of accounts. The grounds on which the said relief was claimed were enumerated in paragraph 3 of the plaint. which would. on being translated into English. read as follows :—

(i) The behaviour of Sohan Singh, manager, the defendant mentioned in the heading of this plaint, has considerably worsened for some time and he does not properly look after the affairs of the said *dharamsala*, nor does he properly behave with the persons who visit the aforesaid

dharamsala for purposes of worship, nor he keeps the *langar* (free kitchen), etc., running for the visitors for which purpose the said agricultural land was donated and the income thereof was to be spent. On the other hand, he expends the income, thereof, to meet his personal unlawful expenditure on the profligacy of his three major sons, who are extremely licentious, and to meet the unlawful expenditure of his wife, who is of loose character and is a licentious woman of extremely doubtful character.

(ii) All the members of his family induce the young women, who visit the said *dharamsala,* to immoral acts. He does not allow the common visitors to stay in the said *dharamsala,* nor they get meals from the *langar* (free kitchen). His young sons induce the women visitors to immoral acts, and on their refusal to submit, they are harassed a lot. He does not show or render the accounts of income and expenditure of the property attached with the said *dharamsala,* nor he ever makes *parkash* (instals and opens for recitation) of Shri Guru Granth Sahib, nor he celebrates any religious day or festival. On the other hand, he causes party faction in the village in order to derive undue advantage. For the above reasons it is necessary that Sohan Singh aforesaid defendant, in the interest of justice, be removed from the management of *dharamsala* and dispossessed from the entire property relating to *dharamsala,* such as buildings and agricultural land, etc., and that he be directed to render accounts of income and expenditure.

The suit was resisted by Sohan Singh, who denied the allegations of the plaintiffs. From the pleadings of the parties the trial, Court framed the following issues :—

(1) Whether the plaintiffs have a *locus standi* to sue ?

(2) Whether the grounds alleged in paragraph 3 of the plaint exist and the plaintiffs are entitled to the relief asked for ?

By his judgment, dated January 21, 1956, Shri Des Raj Dhameja, Subordinate Judge, 1st Class, Amritsar, decreed the suit for the removal of Sohan Singh from the management of the shrine and for his dispossession therefrom as well as from the properties attached to the shrine with costs, but declined to grant a decree for rendition of accounts. On appeal issue No. 1 was not seriously contested before the lower appellate Court at the time of arguments. On issue No. 2 the learned Additional District Judge, found that there was preponderance of evidence on the side of the plaintiffs from which it stood sufficiently proved—

(i) that the son of the defendant abducted the wife of a barber;

(ii) that the wife of the defendant had illicit connections with one or two persons in the village;

(iii) that on the occasion of the *yag* ceremony described as *'jag'* by the witnesses the wife of the defendant behaved in a very disgusting manner in the presence of the gathering by allowing herself to be taken away by one Kartar Singh, who had come to the *dharamsala*, in the presence of huge gathering and by being taken by him inside a room for some time;

(iv) that the statement of the witnesses of the defendant to the effect that no such incident as is referred to above took place and to the effect that neither the defendant's wife nor his grown-up sons were living with the defendant in the village had not impressed the learned Additional District Judge,

but these were no grounds for directing the removal of the defendant or for decreeing the claim of the plaintiffs. The learned Additional District Judge, further held that the allegations made in paragraph 3 of the plaint to the effect that the defendant spent the whole income on himself and his wife and not for purposes connected with the *dharamsala* and that he does not behave properly to the people who go there for worship had not been proved

by any evidence and further that there was no rebuttal of the defendant's statement to the effect that there was "practically no income as the tenants of the land do not pay him (the defendant) any *lagan* as a result of which he had to bring a suit against them". The first appellate Court further proceeded to observe as follows :—

> "A perusal of paragraph No. 3 of the plaint would show that even by implication it did not contain allegations to the effect that the family members of the defendant behave in such a scandalous manner that the people of the village were ashamed to visit the *dharamsala*. A party can succeed only upon the cause of action alleged in the plaint and not on a claim that was never put forward in the plaint or written statement, as the case may be. A case shoild not be decided on grounds not taken up in the plaint."

On the above findings the learned Additional District Judge accepted the appeal of the defendant, set aside the decree of the trial Court and dismissed the suit of Achhar Singh and others, leaving the parties to bear their own costs throughout.

Aggrieved by the judgment and decree of reversal passed by the first appellate Court, the plaintiffs came up in second appeal to this Court. When the second appeal came up for hearing before P. C. Pandit, J., on May 2, 1961, no one appeared for the defendant-respondent. By an *ex parte* judgment of that date the appeal was allowed and it was held that the observation of the learned Additional District Judge, to the effect that the evidence led by the plaintiffs in support of their case was not related to any specific plea in the plaint was not correct and that the points covered by the evidence led by the plaintiffs were fully covered by the pleas taken in paragraph 3 of the plaint. In the opinion of the learned Judge the misconduct and incompetency of the defendant had been fully established in this case. Subsequently, on the application of the defendant, the *ex-parte* judgment and order of this Court was set aside and the learned Single Judge reheard the appeal. After the re-hearing, the appeal was again allowed by the learned Single

Judge, on May 16, 1963. The judgment of the Additional District Judge, was sought to be supported before Pandit, J., on two grounds, viz:—

(i) that the case was not covered by the provisions of section 92 of the Code of Civil Procedure and consequently no relief could have been granted to the plaintiffs; and

(ii) that the findings of fact recorded by the lower appellate Court were not covered by the pleas taken by the plaintiffs in their plaint.

The learned Judge held that the first out of the above-said two points had not been taken by the defendant in any of the Courts below and that even if the said point could be allowed to be raised, the allegations contained in paragraph 3 of the plaint fully brought the case within the ambit of section 92 of the Code. As regards the second contention, it was held that the findings of both the Courts below about the family members of the defendant leading immoral life and about the defendant's wife having illicit connections with one or two persons in the village and her conduct on the occasion of the *Yag* being shameful were themseleves sufficient to show that the defendant was not managing the institution in a proper manner. The learned Judge observed that if the defendant's own family members indulged in such like acts in a religious institution, it was bound to have a very bad influence on the worshippers who visited the place. It was further held that even if the defendant was not spending the income of the institution on his family members, the mere fact that he was allowing such things to happen in the institution, especially by the members of his own household, disentitled him to remain the *mahant* of the sacred place.

In this Letters Patent Appeal against the above-said judgment of the learned Single Judge, the only point that has been argued by Mr. N. S. Chhachhi, learned counsel for the defendant-appellant, is that the allegations made by the plaintiff-respondents in paragraph 3 of the plaint and the facts found by the Courts below do not bring this case within the ambit of section 92 of the Code of Civil Procedure, because the plaintiffs have failed to prove any breach of trust by the defendant.

The relevant opening part of sub-section (1) of section 92 is in the following terms :—

> "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 consent in writing of the Advocate-General, may institute a suit, * * * *".

In order to entitle qualified persons to invoke the jurisdiction of a Civil Court under section 92, they must allege in the plaint at least one of the two things, viz,—

(i) that there has been a breach of an express or constructive trust;

or

(ii) that there is necessity of a direction of the Court.

If none of the two allegations is made in the plaint either expressly or by necessary implication, the foundation for a suit under section 92 is not laid. It is, however, not necessary that both the conditions should co-exist. It is entirely erroneous for the appellant to contend that a direction of the Court can be asked for only if there is proof of breach of trust. The two requirements have been joined with the word 'or' and not with the word 'and'. Allegation of any one of them in the plaint is enough to satisfy the statutory requirement in this behalf. A suit without any allegation of breach of trust will be competent under section 92 if it is made out that a direction of the Court for administration of the trust is necessary. The allegations made in paragraph 3 of the plaint of this suit (already reproduced) make out a good case on both the counts. The question of jurisdiction of the Court is normally determined on the basis of allegations in the plaint. If facts showing breach of trust are alleged in the plaint, it is enough to give jurisdiction to the Court. If once Court has jurisdiction, it is not always necessary that a breach of trust must be proved as a condition precedent for the grant of any relief contemplated by section 92. I am supported in this view by a Division Bench judgment of the Oudh Court in Radha Krishna v. Lachhmi Narain (1).

(1) A.I.R. 1948 Oudh. 203.

The facts stated in the plaint of the case in hand bring it fairly and fully within the ambit of section 92. The facts found completely justify the removal of the defendant. Defendant's own case was that the tenants were not paying him any rent. The fact that the defendant was not recovering rents regularly and had allowed them to accumulate would by itself amount to maladministration of the trust. In any event defendant's inability to stop what has been proved to have been happening in the shrine (according to the findings of fact recorded by both the Courts below) would also necessitate direction of the Court for the administration of the trust. Half-hearted argument of Mr. Chhachhi to show that the *yag* incident did not take place inside the shrine cannot be permitted to be raised at this stage as this matter relates to a pure finding of fact. In any event, I would go to the length of holding that though the defendant may not be personally liable either civilly or criminally for the misconduct of his wife and son, he is certainly not a person qualified to continue as the manager of a religious shrine if he is not able to keep his family members living in the shrine under restraint and permits them to lead immoral life which is bound to have adverse moral influence on the visitors to the shrine. More so, when in the nature of things, visitors to the shrine must include not only adults but persons of adolescent age who may belong to either sex. We are in full agreement with the observations of P. C. Pandit, J., that the facts found by the trial Court and the first appellate Court would by themselves be sufficient to show that the defendant was not managing the institution in a proper manner, which would amount to breach of the implied conditions of the trust and would in any case necessitate suitable direction of the Court. We have, therefore, no hesitation at all in upholding the judgment of the learned Single Judge.

No other point having been argued before us, this appeal must fail and is accordingly dismissed. In the matter of direction for payment of costs we would not like to adopt any course different from that adopted by the learned Single Judge. Costs of this appeal would, therefore, be borne by the parties as incurred.

MEHAR SINGH, C. J.—I agree.

R. N. M.