

Darshan Singh Vs. Hari Nath

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Court : Delhi

Decided On : May-04-1967

Reported in : 3(1967)DLT459

Judge : M.M. Ismail, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 1, Rule 8

Appeal No. : Execution Second Appeal No. 4D of 1959

Appellant : Darshan Singh

Respondent : Hari Nath

Advocate for Pet/Ap. : Bishamber Day and; Shyam Kishore, Advs

Judgement :

M.M. Ismail, J.

(1) One Damodar Dass filed a suit against Nirbhe Ram of Shahpura (Rajasthan) for himself and representing Ram Bhais and Ram Sanahies residing in Katra Nil, Chandni Chowk, :Delhi for a declaration that the defendant and toher sadhus and fakirs belonging to Ram Bhai sect have no right to let out a building which is called Ramdawara or any portion thereof to any tenant or tenants and for a permanent injunction restraining the defendant -and his followers fakirs and Sadhus of Ram Bhai sect from committing any of the said acts. The said suit was disposed of on

30th July 1937 and a decree for declaration and permanent injunction was passed.

(2) In April, 1956 the present Execution application was filed by the respondent herein against the appellant herein on the allegation that contrary to the injunction granted in the suit, rooms in Rarndwara have been let out to tenants. Before proceeding further, two things must be pointed out, one is, that the defendant Nirbhe Ram was impleaded in the suit as a representative of the sect under Order I, Rule 8 Civil Procedure Code and the second is, that the appellant herein became a mahant in 1955 as successor to Nirbhe Ram and the respondent herein also is not the original plaintiff in the suit but a legal representative.

(3) In the execution application, principally two defenses were put forward-(i) it was time-barred, and (ii) neither the appellant herein or the respondent herein was properly brought on record as legal representatives of the original decree-holder and judgment-debtor. Both these defenses did not find favor with the two courts below and hence the present second Appeal.

(4) I am of the view that the present Execution appeal has to be allowed on a very short ground. Admittedly, the present appellant was not a party to the decree and if at all he could only be deemed to be a party by virtue of the fact that the defendant in the suit was sued in a representative capacity representing the sect and the present appellant being a member of the sect was represented by Nirbhe Ram to the extent to which Order I, Rule 8, Civil Procedure Code provides for such representation. The Madras High Court in Full Bench decision reported in Rodia Goundar v. Velandi Gondar had taken the view that though for the purpose of res judicata under Section 11 Civil Procedure Code, a decree for injunction obtained in a suit instituted in accordance with the provisions of Order I, Rule 8 Civil Procedure Code, will be binding on all members that belong to the class who was sought to be represented, still the decree cannot be executed against persons who were co nomine not parties to the suit. If at all, a separate suit for injunction will have to be filed against such person or persons. On the basis of the principles laid down in this decision, it is clear that the present application cannot be proceeded against the appellant herein. The learned counsel for the respondent contended that it has been admitted that the present appellant succeeded Nirbha

Ram as mahant and consequently the decree obtained against Nirbhe Ram can be executed against the present appellant. This argument proceeds on a fallacy. Nirbhe Ram was not sued in his capacity as mahant and the person legally in managed and in charge of Ramdwara. If that was the capacity in which he was sued, it would have been wholly unnecessary to make him representative under Order I, Rule 8 Civil Procedure Code, the entire sect, as a matter of fact, a reading of the plaint in the suit will make it clear that the plaintiff in the suit did not even admit that Nirbhe Ram was legally entitled to manage the property. thereforee, so long as the suit had not been filed and the decree had not been obtained against Nirbhe Ram in his capacity as mahant entitled to manage the property, the fact that the present appellant succeeded Nirbhe Ram as mahant is wholly irrelevant for his liability to be proceeded against in execution.

(5) The learned counsel for the respondent further contended that the present objection was not taken by the appellant in the court below. For one thing, no objection had been taken that without bringing the present appellant on records a legal representative of the original judgment debtor, the execution could not be had against the appellant. Apart from this, the point being one of pure questions of law, without requiring any investigation into any disputed question of fact and one going to the very root of the matter, it can be argued in the Execution application and I permit the appellant to urge this point.

(6) For the reasons, I am of the view that execution application filed against the present appellant is not maintainable. Accordingly I allow this Execution appeal and dismiss the execution application filed by the present respondent herein. The parties will bear their respective costs.