

CASE NO.:
Appeal (civil) 4175 of 2008

PETITIONER:
SWAMI SHANKARANAND (D) BY L.R.

RESPONDENT:
MAHANT SRI SADGURU SARNANAND ETC. & ORS.

DATE OF JUDGMENT: 27/05/2008

BENCH:
S.B. Sinha & Lokeshwar Singh Pantia

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.19185 of 2006)
REPORTABLE

S.B. Sinha, J.

1. Leave granted.
2. Whether a disciple attached to a Mahant in one of the establishments run by a Religious Trust will have locus standi to maintain an appeal from an order of the District Judge allowing an application filed by the Trust under Section 92(1)(f) of the Code of Civil Procedure, 1908 (for short, \023the Code\024) is the short question which arises for consideration in this appeal.
3. One Swami Sarupanand was the founder of the Math. He was disciple of Swami Advaitanand. The latter was a religious preceptor of great learning and had a large following. Swami Sarupanand took his Samadhi at Meerut in March 1936 and according to his wishes Swami Atmavivekanand became the Mahant. He was succeeded by Swami Harsewanand who in turn was succeeded by Swami Harshankaranand. Swami Harshankaranand died on 22.02.1993. He had three disciples; Sarnanand, Premanand and Smt. Tapesara. Premanand died on 10.06.2005. He was succeeded by Swami Shankaranand. Appellant is said to have succeeded Swami Shankaranand. Appellant contends that succession to the office of Mahant is by nomination. Any person so nominated adopts the life of a sanyasi. He leads the life of celibacy and religious mendicancy.
4. A dispute in regard to the office of the Mahant after the death of Swami Atmavivekanand arose in between one Swami Harsewanand on the one side and Sri Krishna Singh on the other.
This Court held Swami Harsewanand to be the successor of Swami Atmavivekanand. After his death, Swami Harshankaranand was substituted in place of Swami Harsewanand in the aforementioned litigation before this Court. Whether he would acquire the status as a successor Mahant or not was left open. One Sri Krishna Singh filed Suit No. 153/80 questioning the status of Swami Harshankaranand as a Mahant of the Math in question commonly known as Garhwaghat Math. The question in regard to the holder of the office is still pending before this Court in Civil Appeal No. 5550 of 2003.
5. Mahant Satguru Sarnanand who also was a disciple of Swami Harshankaranand was in-charge of the Garhwaghat Math. He entered into an agreement for sale with the respondent No.3 which is also a Public Trust. A sum of Rs. 35,50,000/- was the agreed amount of

consideration for the said land. Out of the said amount Rs.33,00,000/- was paid in advance. An application for grant of permission to sell the said property was filed on 02.07.1990. It was advertised in two local newspapers. No objection having been received, permission as sought for was granted by the learned District Judge by an order dated 13.10.1992. Name of the respondent No. 3 was mutated in the revenue records on 31.1.1994. An application was filed by the respondent No. 3 before the Hardwar Development Authority for grant of sanction of building plans on 15.10.1993. It was allowed by an order dated 2.6.1994. Huge constructions have since been raised by the respondent No. 3. Respondent No. 3 popularly known as Gayatri Pariwar Shanti Kunj on the said land has developed: (1) A Research Laboratory known as \021Brahma Varchas Shodh Sansthan\022, and (2) Dev Sanskriti Vishwavidyalaya.

It has also a network of 4000 Shakti Peeths, 25,000 Pragya Sansthans and 30,000 Swadhyaya Mandals etc., which regularly organize \021Satsang\022, \021Discourses\022, \021Inspiring songs\022, and discussions on various problems in their areas to advance the noble cause of the mission. In fact, these serve as local centres of which Shantikunj is the Headquarter.

6. Appellant preferred an appeal before the High Court of Allahabad on 15.11.1994 only, which was transferred to the Uttranchal High Court. By a reason of a judgment and order dated 19.5.2006, the said appeal has been dismissed, inter alia, on the ground that the appellant was not a person aggrieved to maintain the same.

7. Mr. A.K. Ganguli, learned Senior Counsel appearing on behalf of the appellant would submit that the High Court committed a serious error insofar as it failed to take into consideration that the appellant had no knowledge about coming of existence of the said agreement for sale as also the order granting sanction by the District Judge. The learned counsel would contend that the minimum valuation of the property as per the report of the valuer should have been Rs. 72 lakhs and not Rs.35,50,000/- as has been found by the learned District Judge. In any event, it was urged that having regard to the fact that the dispute in regard to Mahantship between the interested parties being pending consideration before this Court, the High Court committed a serious error in passing the impugned judgment.

8. Mr. S.R. Singh, learned Senior Counsel appearing on behalf of the respondent No. 3 and Mr. Adkar, learned counsel appearing on behalf of the other respondent, on the other hand, supported the impugned judgment.

9. Section 92 of the Code of Civil Procedure provides for special power of the District Judge in regard to Public Trusts both charitable and religious. An application for sale of the Trust property must be filed before the District Judge and only on his approval the same can be effected.

In a case of this nature judiciary exercises the jurisdiction of *parens patriae* and, thus, when an objection is filed for grant of sanction in terms of Section 92(1)(f) of the Code, the same should receive serious consideration. The High Court thus may not be entirely correct in opining that the appellant had no *locus standi* to maintain an appeal. It is true that the appellant is said to be in-charge of a Math situated at Varanasi. However, it is contended that he really stays at Mirzapur. According to the respondents, he has nothing to do with the Math in question. But, that is to say, no person being a third party to the application, would not be a \021person aggrieved\022, in a case of this nature cannot be sustained, if the appellant establishes that he is otherwise interested in the welfare of the Trust.

10. The High Court in its judgment noticed:

\02310. Even according to the case of the appellant

Swami Har Shankaranand was the Mahant of the Math. The appellant in the injunction application filed before the Appellate Court has claimed himself to be succeeding Mahant of the Math \023Garhwa Ghat\024 on the death of Swami Har Shankaranand. The Counter affidavit has been filed by the respondents before the High Court as Annexure \026 C.A. 10 to the counter affidavit, which is judgment dated 3.5.1991 passed by X Addl. District Judge, shows that Swami Sarananad, respondent No.1 has become Mahant after death of Swami Har Shankaranand. The aforesaid order dated 3.5.1991 also shows that appellant Premanand was not declared to be the Mahant. Again in view of Annexure C.A. \026 8 to the counter affidavit it reveals that the competent authority in mutation proceeding vide order dated 15.6.1993 came to the conclusion that \023Chadar Mahanthi\024 was given to Swami Satguru Sarananad and not to appellant Premanand on the death of Swami Har Shankaranand. Further paragraph 4(g) to (r) and (s) of the aforesaid counter affidavit reveal that Suit No. 153/1980 which was sought to be converted was initially filed challenging the status of Swami Har Shankaranand as Mahant of Math \023Garhwa Ghat\024 and the High Court vide judgment dated 15.5.2002 passed in W.P. No. 46291 of 2000 has quashed the entire proceedings of suit No. 153/1980. Therefore at present Suit No. 153/1980 is not pending, hence under the aforesaid circumstances it is quite clear that the appellant Premanand is not Mahant of Math \023Garhwa Ghat\024 hence he cannot be said to be an aggrieved party as well as does not have any locus to maintain the aforesaid appeal. Swami Premanand who had filed the appeal is now dead and there is a dispute regarding the succession of Swami Premanand, but once it is held that Swami Premanand has no locus or grievance to maintain the aforesaid appeal, therefore after the death of Swami Premanand who is the appellant in this case, there is nothing on record to indicate as to how the person claiming succession to late Swami Premanand is aggrieved by the impugned order.\024

It is also not in dispute that Swami Premanand was not a party to the proceedings before the learned District Judge. It, however, did not mean that a person who was not a party to the proceedings cannot prefer an appeal. The question in regard to the extension of locus standi of a person to prefer an appeal has recently been considered in Machindranath Kernath Kesar Vs. D.S. Mylarappa & Ors. (C.A. No. 3041 of 2008) disposed of on 29.04.2008, wherein it was held that in a case where a person\022s right to obtain compensation may be defeated by a judgment passed in a connected matter, he would have a right of appeal.

Unfortunately, the High Court has not considered this aspect of the matter. But in view of the order proposed to be passed, it is not necessary to deal with this aspect of the matter any further.

11. The learned counsel for the parties, however, have taken us through the entire records. From the affidavit filed by the third respondent, it appears that it is running a Trust which serves a larger public interest. A large number of constructions have already been made. Constructions started in the year 1994 and have been completed in 1995. Various activities have been going on at that place.

Respondent Nos. 1 and 2 also have purchased an alternative land and raised constructions thereon at a cost of Rs.10 lakhs. In this view of

the matter, in our opinion, no useful purpose would be served in entertaining the appeal. Furthermore, the appellant cannot be permitted to prefer an appeal only because he is interested in the result of Civil Appeal No. 5550 of 2003 which is pending before this Court. He is not a party thereto. He is not claiming Mahantship in his individual capacity in respect of the establishment at Hardwar. It is accepted at the Bar that the said Civil Appeal has got nothing to do with the property in question. Furthermore, the nature of the property when sold was not \021Abadi\022 but was a \021jungle\022 land. It is also not in dispute that the name of Sadguru Sarnanand was also mutated in the revenue records pursuant to the order dated 26.9.1983 in revenue proceedings.

12. We are, therefore, of the opinion that it is not a fit case for exercise of extraordinary jurisdiction under Article 136 of the Constitution of India. The appeal is dismissed accordingly. There shall be no order as to costs.

JUDIS