

A SHRI RAM CHANDRA MISSION & ANR.

v.

P. RAJAGOPALACHARI & ORS.

(Civil Appeal No. 6619 of 2000)

APRIL 29, 2008

B (DR. ARIJIT PASAYAT & TARUN CHATTERJEE, JJ.)

C *Code of Civil Procedure, 1908 – Suit – Withdrawal of suit – Effect of – On facts, disputes pertaining to spiritual heirship to control affairs of Mission – Suit by members of religious society seeking injunction restraining P from acting as President – Ex parte injunction – Set aside by High Court – Upheld by this Court – Subsequently suit withdrawn with liberty to file fresh suit – On appeal, held: Effect and relevance of any proceeding having attained finality to be duly considered in*
D *pending suit – Earlier suit having direct effect was withdrawn, its effect is to be considered – Pending suit to be decided within six months – Parties at liberty to move for interim protection as and when circumstances warrant.*

E *K. Sivaramaiah v. Rukmani Ammal (2004) 1 SCC 471 – referred to.*

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 6619 of 2000.

F From the final Judgment and Order dated 24.11.1998 of the High Court of Judicature at Allahabad in Special Appeal No. 580 of 1997.

G Vinod A. Bobde, B. Vijayalakshmi Menon, Puneet Saxena, D. Ramakrishnan Reddy, Ch. I. Sarveswar and Ekta Kapil for the Appellants.

Dipankar P. Gupta, Dinesh Dwivedi, V. Shekhar, Pradeep S. Baghel, Abhay S. Kushwaha, V.P. Singh, Shrish Kumar Misra, A.K. Mishra, Ashok K. Srivastava, Kamendra Mishra and Rajeev

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Dubey for the Respondents.

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The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court. By a common judgment several civil appeals were heard together and disposed of. A common link in all these appeals was the decision of a religious cum Philanthropic Society named Sh. Ram Chandra Mission. It was established by a late Sh. Ram Chandra Ji Maharajan and on his death disputes arose. The disputes essentially relate to spiritual heirship to control the affairs of the mission. Series of litigation was resulted and the four special leaves before the High Court were summed up and by the impugned order the High Court held that all the four appeals were to be dismissed. Before the Division Bench orders of learned Single Judge were challenged. The relief sought for were categorized under five heads.

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1. Grant of letters of administration in favour of Sri U.C. Saxena in respect of the properties of Sri Ram Chandra Mission through out India and abroad.
2. Declaration that Sri Umesh Chandra Saxena was the President of the Mission and the second petitioner was the Secretary thereof.
3. An interim grant during pendency of the application.
4. In the alternative appointment of a receiver in respect of the entire estate of deceased Sr. Ram Chandra Mission, and
5. Any other relief.

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2. The special leaves were filed by Umesh Chandra Saxena and others, Uma Shankar and Another, the present appellants and another. Special leave by the Umesh Chandra Saxena and Anr. Sri. P. Rajagopalichari were the respondent while in the first special leave by Umesh Chandra Saxena and Anr. The Administrative General, U.P. Allahabad and others were

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A the parties.

3. Background facts as highlighted by the appellant in this appeal are as follows:

B Sh. Ram Chandra Mission-Society was registered,
established and founded by Maharaj, Shri Ram Chandra Ji
Maharaj with its constitution, bye laws and Memorandum of
Society on 21.7.1995. Purportedly there was a covering letter
to the intimation dated 23.3.1974 alleged to have been executed
by the founder in favour of respondent P. Rajagopalachari. This
C intimation according to the appellant was the result of
manipulation and fraud. The nomination was declared him to
be the president of society and clearly stated that he shall work
for the Mission and he is "President of Sahaj Marga System".
On 16.4.1982 nomination was executed in favour of Shri Umesh
D Chandra Saxena as spiritual representative in the direct line of
succession and he was nominated as the successor or
President under Rules 3 and 4 of the registered constitution,
bye laws of the society. The nomination/declaration clearly stated
that the previous nomination if any made by the founder stand
superseded and cancelled. Founder - Shri Ram Chandraji
E Maharaj breathed his last on 19.4.1983. On 4.1.1984 a civil
suit was filed by three members of the Society in the Court of
Civil Judge, Shahjanpur who granted ex-parte injunction
restraining P. Rajgopalachari from acting as President. On
6.2.1984 and 7.2.1984 working Committee meeting was held
F at head quarters and after perusal of booklet Sh. U.C. Saxena
was declared as a successor or President and also the spiritual
representative in the direct line of succession on the basis of
nomination of 16.4.1982. The claim of P. Rajgopalachari based
on the alleged nomination dated 23.3.1974 was treated as
G rejected. On 8.2.1984 General Body was held at the head quarter
of the Society and the claim of Sh. Umesh Chandra Saxena
was approved and he was declared as spiritual representative
in the direct line of succession and also as the successor or
President of the society. Claim of P. Rajgopalachari based on
H the alleged nomination was rejected. On 15.2.1982 a circular

was issued by Secretary Sh. S. A. Sarnad informing all members regarding the declaration of Sh. Umesh Chandra Saxena as Successor President and the spiritual representative in the direct line of succession. An amendment was carried out to the Societies Registration Act, 1860 on 30.4.1984. Section 3(A) was amended by the substitution of sub section 4 of Section 3(A) and addition of a proviso to Section 4(1). By virtue of Section 3(a)(4). List of the members of the managing Committee Body elected was required to be filed. Ex-parte injunction was granted on 4.1.1984 was confirmed on 9.4.1984. In appeal by respondent No. 1, P. Rajgopalachari the High Court granted stay of injunction. The High Court allowed the first appeal and set aside the injunction order. SLP filed against the order of the High Court was dismissed by this Court on 27.9.1985. The suit was subsequently withdrawn on 10.7.1997 on giving of an undertaking not to alignate and not to shift the head quarters. On 23.1.1988 elections were held at the head quarters in accordance with Section 3(A)(4) and Section 4 and the office bearers were duly elected Sh. S.P. Srivastava as President and Sh. B.D. Mahajan as Secretary respectively. On 24.4.1990 in proceeding under Section 25 of the Act report of the Tehsildar counter signed by the SDM as the prescribed authority under Section 25 was passed recognizing the representation of aforesaid two persons as the President and Secretary. On 29.7.1991 another report was given by the tehsildar and K.G. in a proceeding under Section 25 recognising the same position. The aforesaid reports were questioned on behalf of respondent No. 1 before the prescribed authority by an application called SU-2/91 the application was rejected by the prescribed authority and earlier reports were confirmed. An application was moved by 75 members of the society for action under Section 25(2) of the Act on 20.4.1993. On 15.2.1994 elections were held and Sh. Umesh Chandra Saxena and Sh.K.V. Reddy were elected as President and Secretary respectively. on 29.9.1994 the Assistant Registrar passed order holding that since the Constitution provides for nomination of President election cannot be conducted. He also held that in view of the interim orders in

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A civil suit OS (No.) 200 of 1983 the respondent No. 1 P. Rajagopalachari shall continue to work as President. As noted above the suit was withdrawn on 10.7.1997 with liberty to file fresh suit. On 10.7.1997 writ petition No. 37023 of 1994 filed against the order dated 29.9.1994 was dismissed by learned Single Judge. On 24.11.1998 the Division Bench dismissed the special leave No. 580 of 1987 holding that since under the Rules of the society the post of the President and Members of the working committee is not an elected one, Section 25 would not come into play. The High Court, however held that Registrar had no authority to direct anybody to continue an office. It was further held that the application under Section 25(2) itself was untenable and so was the writ petition. On 22.1.1999 elections were held and again Umesh Chandra Saxena and Sh. K.V. Reddy were elected as President and Secretary in accordance with the amended provisions of the Act. On 3.11.2003 Sh. Umesh Chandra Saxena expired and Navneet Kumar Saxena was elected unanimously as the President of the Society in an emergent meeting which was held at Hyderabad by working committee. The general Body on 22.11.2003 had approved and confirmed the election of the Navneet Kumar Saxena as the President of the society. Further the amendment proposed and adopted by the General body of the society, in order to make the rules in consonance of the provisions of the Act. On 12.2.2005 elections were held in the society for electing the Managing committee and again Navneet Kumar Saxena and K. V. Reddy was elected as the president and Secretary respectively.

4. Primarily the stand is that if Section 3(A)(4) as introduced by Act 11 of 1984 cannot be given a restricted meaning. If it is Managing Body "elected" then the provision made would be rendered "nugatory". It is intended to provide that even if Rules, say otherwise "elections" has to be introduced, Section 4 (Proviso) is also relevant. The stand is that earlier there was no need for list of elected members as there was no elected member. So the purpose is to have elected members. Section 4 speaks of an annual list. If the intention was that the members

were to be elected, the legislature could have said so specifically without leaving it to be inferred by implication. Section 27 provides for the consequence for non compliance with Section 4. It is stated that the position in 1975 was that chosen includes "election". Now, it only means elected by implication and that to be read in the line of Section 3(A) and 4 proviso, it is pointed out that Section 25(2) refers to election and the remedy to challenge. If there is no remedy nobody is left remediless. Alternatively, it is submitted that assuming it is to be done by nomination, P. Rajgopalachari could have been nominated, but it has been annulled on 16.4.1982 as Umesh Chandra Saxena remains nominated. It is pointed out that role as President of the Sahaj Marg system is different. The application filed by Sh. Rajgopalachari has to be tested as per clause 3(b), these were not challenged and Rajgopalchhari cannot have nay role to play. P.Rajgopalachari could not have been nominated because he is not in the direct line of succession. In any event, after passing of order dated 16.4.1982 he has no role to play. The working committee's decision, resolution of the General Body all are of similar effect. The stand is strongly opposed by the respondent to say that nomination were not merely in respect of the Sahaj Marg system system but it was in respect of President itself.

5. It is pointed out that the earlier suit having direct effect was withdrawn and the effect of it has to be considered. The effect of the withdrawal of a suit has been considered by this Court in *K. Sivaramaiah v. Rukmani Ammal* [2004(1) SCC 471]. It was inter alia observed as follows:

"So far as Original Suit No. 7359 of 1989 is concerned, the findings recorded in the judgment therein could have constituted res judicata but the fact remains that the appellate court permitted the withdrawal of the suit and once the suit has been permitted to be withdrawn all the proceedings taken therein including the judgment passed by the trial court have been wiped out. A judgment given in a suit which has been permitted to be withdrawn with the liberty of filing a fresh suit on the same cause of action

A cannot constitute res judicate in a subsequent suit filed pursuant to such permission of the court.”

6. It is not necessary to deal with the true import of Sections 3(A) and 4. It would be appropriate to direct that the pending suit shall be decided within a period of six months.

B 7. The effect and relevance of any proceedings which have attained finality shall be duly considered in the pending suit. It is open to the parties to move for such interim protection as the circumstances warrant. The appeal stands disposed of accordingly. No order as to costs.

C N.J. Appeal disposed of.