

Sadhu Singh v. Sant Narain Singh and others (J. M. Tandon, J.)

vested with the jurisdiction could be tried by civil Court only was repelled as it was observed that the Tribunal had the jurisdiction even to extend the period of limitation in a given set of circumstances. It would thus be seen that there is no merit in the contention of the learned counsel for the appellant that the Tribunal had no jurisdiction to try the claim regarding the damages to property. The finding of the Tribunal on issue No. 3 is also affirmed.

(8) For the reasons recorded above, there is no merit in both the appeals and the same are hereby dismissed with costs.

H.S.B.

Before J. M. Tandon, J.

SADHU SINGH—*Petitioner.*

versus

SANT NARAIN SINGH AND OTHERS—*Respondents.*

Civil Revision No. 1015 of 1976.

and

Civil Misc. No. 1049/CII of 1977.

May 12, 1978.

Indian Evidence Act (1 of 1872)—Section 138—Defendant in a suit—Whether can cross-examine a co-defendant and his witnesses.

Held, that section 138 of the Evidence Act 1872 allows the right of cross-examination of a witness to an adverse party. If it appears from the pleadings of the parties that their stands are contradictory then for a just decision of the suit the defendant should be allowed to cross-examine his co-defendant. The purpose of cross-examination is to test the veracity of the testimony of a witness. Parties arrayed as defendants in a suit having taken contradictory stands on a relevant and material issue, shall be adversary to each other and, therefore, entitled to exercise the right of cross-examination against each other.

(Paras 7 and 10)

Petition Under Section 115 C.P.C. for revision of the Order of the Court of Shri N. D. Bhatara, P.C.S., Sub Judge, 1st Class, Jagraon,

dated the 14th day of June, 1976, holding that none of the defendants have any right to cross-examine the witness produced by co-defendants as they cannot be considered to be adverse to each other, rather their case and defence is common. Claim Amended Suit for declaration that the plaintiff is the Mohtamim of Gurdwara Nanaksar situated in village Agwar Lopen Khurd, tehsil Jagraon District Ludhiana nominated and appointed by the late Mohtamim Sant Ishar Singh Sewadar of Baba Nand Singh and also unanimously elected by the Sangat, i.e., worshippers of the Gurdwara and (2) for the issue of permanent injunction restraining the defendants from interfering in any manner with the rights of the plaintiff as Mohtamim in managing all the affairs relating to the gurdwara and the lands attached thereto and in discharging his religious duties and functions and restraining the defendants from functioning as a managing committee. Claim in Revision....To accept the revision and to set aside the Order dated 14th June, 1976.

C. Misc. No. 1049/CII of 77.

Application Under Section 151 C.P.C. praying that Bhai Ram Singh, Chela Sahib Baba Sadhu Singh Ji, r/o Gurdwara Nanak Sar Tehsil Jagraon, district Ludhiana be allowed as legal representative of the deceased respondent Inder Singh, r/o Jori Wala-respondent No. 5.

M. J. S. Sethi, Advocate, for the petitioner.

Narinder Singh, Advocate, for respondent No. 2.

Ujagar Singh, Advocate; for respondent No. 1.

JUDGMENT

J. M. Tandon, J.

(1) Whether a defendant can cross-examine a co-defendant and his witnesses is the sole point involved in this revision directed against the order of Shri N. D. Bhatara, Subordinate Judge Ist Class, Jagraon, dated 14th June, 1976, declining the prayer of Sadhu Singh, defendant-petitioner, to cross-examine his co-defendant Inder Singh, since dead.

(2) It is necessary for the proper appreciation of the point in issue to set out the facts of the case. The dispute is about the management of a religious institution known as Gurdwara Nanaksar situated in village Agwar Lopen Khurd, Tehsil Jagraon, District

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Ludhiana. Sant Ishar Singh was the last *Mohatmim* of the Gurdwara and he died in 1963. Sant Narain Singh filed a suit for declaration that he was a validly appointed *Mohatmim* of this Gurdwara having been nominated by the late *Mohatmim* Sant Ishar Singh in 1963 and unanimously approved and elected by the *Sangat* on 22nd July, 1971. It was alleged that there was no established custom or usage of this institution about the succession of the office of *Mohatmim*. Sant Ishar Singh had been nominated by the previous *Mohatmim* Baba Nand Singh and approved and elected by the *Sangat*. Sant Narain Singh thereby claimed to have become successor to Sant Ishar Singh for the management of the affairs of the Gurdwara and the property attached thereto. He further alleged that the Revenue authorities while sanctioning the mutation of the land attached to the Gurdwara constituted a Managing Committee including him and the defendants which they had no right to do. Sant Narain Singh, thus prayed for a declaration that he was the validly appointed *Mohatmim* of the Gurdwara and also for a permanent injunction restraining the defendants from interfering in any manner with his rights as *Mohatmim* for managing the affairs of the Gurdwara and the properties attached thereto.

(3) The defendants who are the members of the Managing Committee, constituted to manage the Gurdwara, contested the suit. All the defendants, except Sadhu Singh, defendant-petitioner, filed a joint written statement, whereas Sadhu Singh filed a separate one. The defendants, except Sadhu Singh, denied that Sant Narain Singh was nominated as *Mohatmim* of the Gurdwara by Sant Ishar Singh or his nomination was approved by the *Sangat*. According to them, Sant Narain Singh being of doubtful reputation could not be appointed a *Mohatmim* of the Gurdwara. It was alleged that the Managing Committee had been controlling the affairs of the Gurdwara since after the death of Sant Ishar Singh and it was not constituted by the Revenue authorities. Sadhu Singh, defendant-petitioner, and not Sant Narain Singh plaintiff did *Hazoori* (personal) service to Sant Ishar Singh. It was, consequently, prayed that the suit of Sant Narain Singh be dismissed.

(4) Sadhu Singh, defendant-petitioner, in a separate written statement also denied that Sant Narain Singh, plaintiff, had been nominated as *Mohatmim* by Sant Ishar Singh or his nomination was approved by the *Sangat*. According to him, *Hazoori* service was a necessary qualification for being appointed a *Mohatmim* of the

Gurdwara. He was the only person who had done such service to Sant Ishar Singh. He was, accordingly, the only person entitled to succeed to the exalted position of *Mohatmim* of the Gurdwara. He, as well, prayed that the suit of Sant Narain Singh, plaintiff, be dismissed.

(5) On the pleadings of the parties the trial Court framed issues. For the purpose of this revision only issue No. 4 (reproduced below) is relevant:—

Issue No. 4:

What are the usages and customs for the appointment of *Mohatmim* of Gurdwara Nanaksar ?

(6) The plaintiff having concluded his evidence in the affirmative, the defendants started leading their evidence in the trial Court. Inder Singh, defendant, appeared as a witness to support his case. Sadhu Singh, defendant-petitioner, desired to cross-examine him. The trial Court,—*vide* order, dated 14th of June, 1976, did not concede to his request. He has, consequently, challenged this order in this revision.

(7) Section 138 of the Indian Evidence Act, which deals with the order of cross-examinations including examination-in-chief, cross-examination and re-examination of witnesses, reads as under:—

“Witness shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires; re-examined.”

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Section 138 allows the right of cross-examination of a witness to an adverse party. Sadhu Singh, petitioner, shall have a right to cross-examine Inder Singh, defendant, if they can be treated adverse to each other. For this purpose it would be necessary to advert to their pleadings as also to the nature of statement made by Inder Singh. So far as the statement of Inder Singh is concerned it is in

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accordance with his written statement. In this situation reliance shall have to be placed on the pleadings of Sadhu Singh, petitioner, and of the remaining defendants including Inder Singh.

(8) Sant Narain Singh, plaintiff, has claimed to be the *Mohatmim* of the Gurdwara on the ground that he was so nominated by the late *Mohatmim* Ishar Singh and approved by the *Sangat*. The stand taken by Sadhu Singh is that *Hazoori* service of the last *Mohatmim* was an essential ingredient to become eligible for appointment as a *Mohatmim*. As Sant Narain Singh did not perform such service to late Sant Ishar Singh he was not eligible to be appointed a *Mohatmim*. The stand of the remaining defendants, other than Sadhu Singh, is that *Hazoori* service of the last *Mohatmim* is not an essential ingredient for appointment as a *Mohatmim* of the Gurdwara. After a *Mohatmim* is dead, the management of the Gurdwara is taken over by a Managing Committee who may nominate a suitable person as *Mohatmim* of the Gurdwara, who will be so elected, if approved by the *Sangat*, and it is what happened after the death of late Sant Ishar Singh in 1963. The subtle difference between the stands taken by Sadhu Singh, defendant-petitioner, on the one hand, and the remaining defendants on the other, is about *Hazoori* service of the last *Mohatmim* being an essential ingredient or otherwise for eligibility for appointment as a *Mohatmim* of the Gurdwara.

(9) The present revision has been resisted by Sant Narain Singh only. The cross-examination of Inder Singh, defendant, by Sadhu Singh, defendant-petitioner, was also disallowed on the objection raised by him. It has been argued on behalf of Sant Narain Singh that the statement made by the witness was not injurious to Sadhu Singh, and that two sets of defendants wishing to defeat the claim of the plaintiff on two different grounds cannot be treated as adversary to each other.

(10) The purpose of cross-examination is to test the veracity of the testimony of a witness. Under issue No. 4, reproduced above, it is relevant to find out whether *Hazoori* service of the last *Mohatmim* is an essential ingredient or not for becoming eligible for appointment as a *Mohatmim* of the Gurdwara. On this particular point the stands taken by Sadhu Singh, defendant-petitioner on the one side and the remaining defendants on the other, are not identical. Their stands on this point are rather contradictory. It cannot be said that the point of *Hazoori* service has no relevancy for the purpose of a

just decision of the suit. Parties arrayed as defendants in a suit, having taken contradictory stands on a relevant and material issue, shall be adversary to each other and entitled to exercise their right of cross-examination against each other. Sadhu Singh, defendant-petitioner, therefore, had a right to cross-examine his co-defendant Inder Singh and it was wrongly disallowed by the trial Court.

(11) In the result, the present revision is accepted and the impugned order set aside. The parties are left to bear their own costs.

N. K. S.

Before A. S Bains J.

BALWANT SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 302 of 1978.

May 15, 1978.

Indian Penal Code (45 of 1860)—Sections 320 and 326—Partial cut of a bone—Extent and depth of such cut not indicated—Offence of grievous hurt—Whether made out.

Held, that from a reading of section 320 of the Indian Penal Code 1860, it is plain that a hurt can be designated as grievous only if there is fracture or dislocation of bone or tooth. If the extent of the cut, fracture or dislocation of bone is not designated or clarified and it is not shown as to whether the cut is deep or a mere scratch on the surface, it would not be proper to infer that the injury is grievous. As such the offence would not fall within the mischief of section 326.

(Para 4).

Petition under section 401 of the Cr. P.C. for the revision of the order of Shri N. S. Bhalla, Sessions Judge Kapurthala, dated 13th March, 1978, affirming that of Shri H. C. Modi, C.J.M. Kapurthala, dated 25th April, 1977, convicting the petitioners.

Charges and Sentences:—

Dharam Singh:—U/s 326 IPC and Balwant Singh and Gurcharan Singh u/s 326/34 IPC, each to undergo R.I. for two years and