

APPELLATE CIVIL.

Before Mr. Justice Tek Chand and Mr. Justice Johnstone.

SITAL DAS (PLAINTIFF) Appellant

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versus

SHROMANI GURDWARA PARBANDHAK
COMMITTEE, AMRITSAR, AND ANOTHER
(DEFENDANTS) Respondents.

June 15.

Civil Appeal No. 240 of 1928.

Sikh Gurdwaras (Punjab) Act, VIII of 1925, section 5—petition under—claiming right in property attached to a notified Sikh Gurdwara—order by Tribunal directing interim injunction under Order XXXIX, Rule 1, Civil Procedure Code—Appeal therefrom, under Order XLIII, rule 1 (r)—whether competent—“final order”—meaning of—in section 34 of the Act.

During the pendency of a petition filed by the appellant under section 5 of the Sikh Gurdwaras Act in respect of a *Gurdwara* notified under the Act, the Sikh Gurdwaras Tribunal, on an application presented by the respondent, issued an *interim* injunction to the appellant not to realise the *Jagir* money pending the decision of the petition. From this order the appellant lodged an appeal to the High Court under Order XLIII, rule 1 (r) of the Civil Procedure Code.

Held, that the appeal was incompetent, as sub-section (1) of section 34 of the Act has taken away from an aggrieved party the right to appeal against orders passed by the Tribunal under the provisions of the Civil Procedure Code, even though such orders, if passed by an ordinary Court, would have been appealable under section 104 or Order XLIII, Civil Procedure Code, unless they come within the purview of sub-section (1) of section 34.

Held also that the order in question was not appealable under section 34 of the Act, as it was not a “final order” determining any matter decided by the Tribunal under the provisions of the Act.

A “final order” signifies an order comprising the decision upon a cardinal issue in a suit, that issue being one that

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goes to the foundation of the suit, and one that can never, while the decision stands, be questioned again in the suit.

Radha Kishan v. Collector of Jaunpur (1), *Sultan Singh v. Murli Dhar* (2), *Rahimbhoy v. Turner* (3), *Muzhar Hossein v. Bodha Bibi* (4), and *Bozson v. Altrincham Urban District Council* (5), relied upon.

Standard Discount Co. v. La Grange (6), *Salamasi v. Warner* (7), and *Damra Coal Company v. Benares Bank* (8), referred to.

Miscellaneous first appeal from the order of the Sikh Gurdwaras Tribunal, Lahore, dated the 21st January 1928, granting an injunction, etc.

J. L. KAPUR, for Appellant.

MAN SINGH and BHAGAT SINGH, for Respondents.

JUDGMENT.

TEK CHAND J.

TEK CHAND, J.—The appellant, Sital Das, *ex* Mahant of *Gurdwara Ker Bawa-wali* in the Gujrat District, which is a notified *Sikh Gurdwara* under (Punjab) Act VIII of 1925, and in respect of which a consolidated list of properties had been duly published in the *Punjab Gazette*, presented to the Local Government a petition under section 5 of the Act claiming that the *Jagir money* and the lands mentioned in the list did not appertain to the *Gurdwara* but belonged to him personally. This petition was in due course forwarded to the Sikh Gurdwaras Tribunal for disposal in accordance with the provisions of the Act. On the Shromani Gurdwara Parbandhak Committee and the local committee of management of the *Gurdwara Ker Bawa-wali* denying the appellant's claim the Tribunal framed an issue to determine

(1) (1900) I. L. R. 23 All. 220, 227 (P. C.). (5) (1903) 1 K. B. 547.

(2) (1924) I. L. R. 5 Lah. 329 (F. B.). (6) (1877) 3 C. P. D. 67, 71.

(3) (1890) I. L. R. 15 Bom. 155 (P. C.). (7) (1891) 1 Q. B. 734.

(4) (1894) I. L. R. 17 All. 112 (P. C.). (8) (1915) 28 I. C. 569.

the nature of the property. On the same day the respondents presented an application under Order XXXIX, rule 1, and Order XL, rule 1, Civil Procedure Code, praying that, as it was necessary to prevent the appellant from appropriating the *Jagir* money and the *mesne* profits of the land *pendente lite*, a receiver may be appointed and a "letter of request" issued to the Deputy Commissioner, Gujrat, not to pay the *Jagir* money to the appellant. This application was resisted by the appellant on the ground that the Tribunal was a Court of limited jurisdiction, which had been established to determine certain specified matters only, and had no power to receive petitions under Orders XXXIX and XL of the Civil Procedure Code and to pass orders thereon. It was also urged that no case had been made out on the merits for the appointment of a receiver or issuing a "letter of request" to the Deputy Commissioner.

On the legal point the learned President (Skemp J.) and the two Members of the Tribunal were not agreed. The former was of opinion that the appellant's objection was sound and that the application should be thrown out *in limine*, on the ground that sub-section (9) of section 12 of the Act did not empower the Tribunal to issue the orders prayed for as such orders were not necessary "for the purpose of deciding the claim of the appellant under section 5 to the properties in dispute." On the other hand, the other two Members (Messrs. Munna Lal and Kharak Singh) held that a narrow interpretation should not be put on sub-section (9) aforesaid and that orders under Orders XXXIX and XL, being merely incidental to the decision of the "matter" pending before them, could in appropriate cases be

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passed by the Tribunal. On the merits they held that this was not a fit case for the appointment of a receiver and rejected the prayer in that behalf, but thought that it was necessary to preserve the *Jagir* money *pendente lite*. Instead of sending a "letter of request" to the Deputy Commissioner as prayed for, they however, directed that an *interim* injunction be issued to the appellant "directing him not to realize the *Jagir* money from the Treasury pending the decision of the petition under section 5 by the Tribunal."

From this order *Mahant Sital Das* has presented an appeal under Order XLIII, rule 1 (r) of the Code of Civil Procedure to this Court.

On behalf of the respondents a preliminary objection has been raised that an order passed by the Tribunal issuing a temporary injunction is not appealable under Order XLIII (1), Civil Procedure Code, or any other provision of the law. The law as to appeals against orders passed by the Tribunal is contained in section 34 of the Sikh Gurdwaras Act (VIII of 1925) and we have to see whether in reference to that section an appeal lies in this case. Section 34 reads as follows:—

"(1) Any party aggrieved by a *final order* passed by tribunal *determining any matter decided by it under the provisions of this Act* may, within ninety days of the date of such order, appeal to the High Court.

"(2) *No appeal or application for revision shall lie against an order of a tribunal except as provided for in sub-section (1).*

"(3) An appeal preferred under the provisions of this section shall be heard by a Division Court of the High Court."

As stated already the appeal before us has been preferred under Order XLIII, rule 1 (r) of the Civil Procedure Code, but sub-section (2) of section 34 explicitly lays down that "no appeal or application for revision shall lie against an order of a Tribunal except as provided for in sub-section (1)." There is no manner of doubt that this sub-section has taken away from an aggrieved party the right to appeal against orders passed by the Tribunal under the provisions of the Civil Procedure Code, even though such orders, if passed by an ordinary Court, would have been appealable under section 104 or Order XLIII, Civil Procedure Code, *unless* they come within the purview of sub-section (1) of section 34. It follows, therefore, that the appeal against the order in question, if competent at all, should have been preferred under section 34 (1) of the Act and not under Order XLIII, rule 1 of the Code. The appeal is, therefore, not properly constituted and must fail on this ground alone.

But I do not want to rest my decision on a technicality, as I am of opinion, that the order under appeal is not a "final order" "determining any matter decided by it (the Tribunal) under the provisions of the Act." The expression "final" is not defined in the Sikh Gurdwaras Act, but there is no doubt that in section 34 (1) it is used to signify orders which are not of an interlocutory nature. The expression is found in the Civil Procedure Code and other legislative enactments in India and in England and has been uniformly interpreted as meaning "an order which finally decides any matter that is directly at issue in the case in respect of the rights of the parties." See *Radha Kishan versus Collector of Jaunpur* (1). The point in that case arose in reference

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to section 109 of the Civil Procedure Code, which “provides that * * * an appeal shall lie to His Majesty in Council from any decree or “final order passed on appeal by a High Court * * *.” Again a Full Bench of our own Court in *Sultan Singh* versus *Murli Dhar* (1), following *Rahimbhoy* versus *Turner* (2), and *Muzhar Hossein* versus *Bodha Bibi* (3), has held that a “final order” is an order comprising the decision upon a cardinal issue in a suit, that issue being one that goes to the foundation of the suit, and one that can never, while the decision stands, be questioned again in the suit.

The view expressed in these rulings is in accord with that taken in England, where in reference to Order LVIII, rule 3 of the Judicature Act, Lord Alverstone, C.J., with the concurrence of the Lord Chancellor (Lord Halsbury) has laid down the test in these terms—“Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then it ought to be treated as a final order; but if it does not, it is then an interlocutory order.” *Bozson* versus *Altrincham Urban District Council* (4). See also *Standard Discount Co.* versus *La Grange* (5) and *Salaman* versus *Warner* (6).

Applying this test to the case before us, the order in question must be held to be one of a purely interlocutory character. The *interim* injunction issued is merely provisional in its nature. It is not intended to conclude a right and is not decisive of the contentions of the parties on the merits of the litigation. Its sole object is to preserve the *Jagir* money unimpaired till the decision of the litigation, to be dis-

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(6) (1891) 1 Q.B. 734.

posed of in accordance with the orders which will eventually be passed by the Tribunal on the appellant's application under section 5. It is in no sense of the term, a "final order" "determining a matter decided by the Tribunal under the provisions of the Act." In the Civil Procedure Code itself such orders are described as being interlocutory (section 94) and temporary (Order XXXIX), and the Calcutta High Court in *Damra Coal Company versus Benares Bank* (1), has definitely ruled that an order of the High Court, made in reversal of the order of the Court of first instance, refusing to issue a temporary injunction, was not a "final order" within the meaning of section 109 of the Code of Civil Procedure.

After giving the matter my careful consideration I am of opinion that the preliminary objection must be sustained and it must be held that the order passed by the lower Court is not appealable.

Before closing this judgment I think it necessary to mention that both counsel wanted to have an expression of an opinion on an argument which they had addressed to us by analogy, *viz.*, whether or not an order passed by the Tribunal issuing a perpetual injunction or appointing a receiver was appealable. But as that question does not directly arise in this case and is not necessary for a decision of the question before us, I decline to go into it and this judgment ought not to be taken as expressing any opinion thereon.

The appeal is incompetent and must be dismissed. But having regard to all the circumstances of the case, I would leave the parties to bear their own costs in this Court.

JOHNSTONE J.—I concur.

A. N. C.

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Appeal dismissed.

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