

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2025
(@ SLP(C) No. 9334/2024)

HIMALAYAN BRAHMO SAMAJ MANDIR
TRUST SHIMLA & ORS.

APPELLANT(S)

VERSUS

BINDIYA KULLER & ORS.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. The short question which arises for consideration in this appeal is as to whether the institution of a suit under Section 92 of the Code of Civil Procedure, 1908 (for short, 'the CPC'), before the Principal District Judge, and its transfer thereafter, to the Additional District Judge due to an administrative exigency, would be in compliance with the said provision.
3. The facts of the case are as under:

The appellants filed an application under Section 92 read with Section 151 of the CPC, seeking leave to file a suit for declaration and permanent prohibitory injunction. The said application was filed before the Principal District Judge, Shimla. Due to an administrative exigency, the same was

transferred to the Additional District Judge-II, Shimla (for short, 'the ADJ'). Thereafter, leave was granted by the ADJ, vide order dated 04.04.2015. This was challenged by the defendants before the High Court in a revision petition, which was disposed of with liberty to file an appropriate application seeking revocation of the leave granted. This was accordingly done. Upon hearing the parties, the said application was rejected by the ADJ vide order dated 16.08.2018, which has not been challenged by the defendants thereafter. An order of interim injunction had also been sought for and granted. At that stage, an application was filed by the defendants invoking Order VII Rule 11 of the CPC. While hearing the said application, the issue of jurisdiction was taken up by the ADJ and decided against the appellants, finding that an Additional District Judge has no jurisdiction to entertain and try a suit under Section 92 of the CPC. Accordingly, the case file was directed to be sent to the Court of the District Judge, vide order dated 02.11.2019. The District Judge vide order dated 28.11.2019, sent the case file back to the Court of the ADJ, finding that the appropriate course would have been for the ADJ to send a request/reference to the High Court, rather than sending the case file to the Court of the District Judge. Both these orders dated 02.11.2019 and 28.11.2019, were challenged before the High Court. The High Court, vide the impugned order, found the leave granted by the ADJ to be bad in law, set aside the order dated 28.11.2019 and ordered the suit to be transferred to the

docket of the District Judge, for fresh adjudication of the application under Section 92 of the CPC. Aggrieved by the same, the appellants are before us.

4. The learned Senior counsel appearing for the appellants submitted that the issue qua jurisdiction had attained finality by the dismissal of the application seeking revocation of leave. In any case, Section 6 read with Sections 9 and 17 of the Himachal Pradesh Courts Act, 1976 (for short, 'the HP Courts Act') facilitates the Principal District Judge to transfer cases to the Additional District Judge. On facts, the present suit was instituted before the Principal District Judge. On the question of law also, it has been held by the full Bench of the Punjab High Court in "*Gagangir Vs. Rasal Singh & Anr.*" [Vol.XVIII-(2)], reported in *Indian Law Reports*, Page Nos.81-86, followed by the Division Bench of the Allahabad High Court in "*Ram Kishore Sharma & Ors. Vs. Gopi Nath & Ors.*", reported in 1979 SCC Online Allahabad 244, while dealing with very same provision, namely Section 92 of the CPC, and *pari materia* provisions of the HP Courts Act, that the power to transfer a suit under Section 92 of the CPC, is available to the Principal District Judge.
5. Learned Senior counsel appearing for the respondents submitted that the question of jurisdiction can be raised at any stage. Admittedly, there is no notification issued by the State Government empowering the Additional District Judge under Section 92 of the CPC and therefore, no interference in the

impugned order, is required.

6. Upon hearing the learned Senior counsel appearing for both sides, we are inclined to set aside the impugned order, both on facts and on law. Admittedly, the suit had been instituted before the Principal District Judge who has the jurisdiction to entertain the same. On the administrative side, the said Court transferred the suit to the ADJ. The application of the defendants seeking revocation of leave was rejected and the same has attained finality. Even otherwise, we are not in agreement with the law laid down by the High Court in the impugned order, on the interpretation of Section 92 of the CPC vis-à-vis Sections 6, 9 and 17 of the HP Courts Act. There is no need for a notification by the State Government empowering the Additional District Judge under Section 92 of the CPC, as we are concerned with an administrative decision taken by the Principal District Judge, before whom the suit was instituted.
7. We are also not dealing with a case where the matter has been relegated to a Court other than a District Court. **Section 6 read with Sections 9 and 17 of the HP Courts Act clearly gives jurisdiction to the Principal District Judge, to transfer a case. Section 2(b) of the HP Courts Act also defines a District Judge to include an Additional District Judge.** Thus, the impugned order cannot be sustained in the eyes of law.
8. In such view of the matter, the impugned order stands set aside. Consequently, the matter is directed to be proceeded with by the Additional District Judge. It is needless to state

that the grant of leave and the consequential order of injunction stand restored, and the suit shall proceed from that stage.

9. Consequently, the orders of the ADJ and the District Judge, dated 02.11.2019 and 28.11.2019 respectively, are set aside. However, the pending application under Order VII Rule 11 of the CPC, shall be decided on its own merits, except on the question of law decided in this appeal.
10. The appeal is allowed accordingly.
11. No order as to costs.
12. Pending applications, if any, shall stand disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[RAJESH BINDAL]

NEW DELHI;
4th FEBRUARY, 2025

ITEM NO.18

COURT NO.8

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 9334/2024

[Arising out of impugned final judgment and order dated 05-01-2024 in CMPMO No. 10/2020 passed by the High Court of Himachal Pradesh at Shimla]

HIMALAYAN BRAHMO SAMAJ MANDIR TRUST SHIMLA & ORS. Petitioner(s)

VERSUS

BINDIYA KULLER & ORS.

Respondent(s)

FOR ADMISSION and I.R.

Date : 04-02-2025 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE RAJESH BINDAL

For Petitioner(s) Mr. Dhruv Mehta, Sr. Adv.
Mr. Siddhant Munshi, Adv.
Mr. Anitesh Choudhary, Adv.
Mr. Himanshu Munshi, AOR
Mr. Rajender Sharma, Adv.

For Respondent(s) Mr. M. Sathyanarayaman, Sr. Adv.
Ms. Rashmi Singhania, AOR
Mr. Shivam Prashar, Adv.
Mr. Alabhya Dhamija, Adv.
Mr. Bhaskar Gowtham, Adv.
Mr. Subodh Patil, Adv.

Mr. S.D. Sharma, Adv.
Mr. Satya Mitra, AOR

Mr. Nachiketa Joshi, Sr. Adv.
Mr. Pushpinder Singh , AOR

Mr. Devesh Kumar Mishra, AOR
Mr. Kousik Ghosh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(SWETA BALODI)

ASTT. REGISTRAR-cum-PS

(ANJALI PANWAR)

COURT MASTER (NSH)

(Signed order is placed on the file)